

see V. 2447

No. 11350

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

MASTER LUBRICANTS COMPANY, a corporation,
Appellant,

vs.

GEORGE O. COOK, MINNIE M. COOK, IGNATIUS
F. PARKER, Trustee in Bankruptcy of the Estates
of George O. Cook and Minnie M. Cook, Bankrupts,
Appellees.

TRANSCRIPT OF RECORD

Upon Appeal from the District Court of the United States
for the Southern District of California,
Central Division

FILED

AUG 19 1946

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italics; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS:

For Appellant:

JAMES P. CLARK

518-519 O. T. Johnson Building

Los Angeles 13, Calif.

For Appellees George O. Cook and Minnie M. Cook:

GEORGE GARDNER

811 H. W. Hellman Building

Los Angeles 13, Calif.

For Appellee Ignatius F. Parker, Trustee, etc.:

IGNATIUS F. PARKER

636 H. W. Hellman Building,

Los Angeles 13, Calif. [1*]

DEBTOR'S PETITION

Form No. 1

In the District Court of the United States for the
Southern District of California
Central Division

In Bankruptcy. No. 43317 Y

In the Matter of the Estate of
GEORGE O. COOK,

Bankrupt.

To the Honorable.....Judge of the
District Court of the United States for the South-
ern District of California:

The Petition of George O. Cook, Residing at No. 1513
West 105th Street, in the City of Los Angeles, County of
Los Angeles, State of California, by occupation a Sales-
man and truck driver, and employed by Ken Goins, 8601
Long Beach Blvd. (or engaged in the business of
.....), respectfully represents:

1. Your petitioner has had his principal place of busi-
ness (or has resided, or has had his domicile) at 1513
West 105th St., Los Angeles, California, within the
above judicial district, for a longer portion of the six
months immediately preceding the filing of this petition
than in any other judicial district.

2. Your petitioner owes debts and is willing to sur-
render all his property for the benefit of his creditors
except such as is exempt by law, and desires to obtain
the benefit of the Act of Congress relating to bankruptcy

3. The schedule hereto annexed, marked Schedule A, and verified by your petitioner's oath, contains a full and true statement of all his debts, and, so far as it is possible to ascertain, the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said Act.

4. The schedule hereto annexed, marked Schedule B, and verified by your petitioner's oath, contains an accurate inventory of all his property, real and personal; and such further statements concerning said property as are required by the provisions of said Act.

Wherefore your petitioner prays that he may be adjudged by the court to be a bankrupt within the purview of said Act.

GEORGE O. COOK,
Petitioner.

J. EVERETT BROWN,
Attorney for Petitioner.

State of California, County of Los Angeles—ss.

I, George O. Cook, the petitioner named in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information and belief.

GEORGE O. COOK, Petitioner.

Subscribed and sworn to before me this 9th day of June, 1944.

[Seal] J. EVERETT BROWN,
Notary Public in and for the County of Los Angeles,
State of California.

(Official Character.) [2]

SUMMARY OF DEBTS AND ASSETS

(From the Statements of the Debtor in
Schedules A and B)

Dollars Cents

Schedule A	1—a	Wages	None
Schedule A	1—b (1)	Taxes due United States	None
Schedule A	1—b (2)	Taxes due States.....	None
Schedule A	1—b (3)	Taxes due counties, districts and mu- nicipalities	None
Schedule A	1—c (1)	Debts due any per- son, including the United States, hav- ing priority by laws of the United States	None
Schedule A	1—c (2)	Rent having priority	None
Schedule A	2	Secured claims	None
Schedule A	3	Unsecured claims.....	3424.80
Schedule A	4	Notes and bills which ought to be paid by other parties thereto	None
Schedule A	5	Accommodation paper	None
			<hr/>
Schedule A, total			3424.80
			<hr/> <hr/>

Schedule B	1	Real estate	None
Schedule B	2—a	Cash on hand	None
Schedule B	2—b	Negotiable and non- negotiable instru- ments and securities	None
Schedule B	2—c	Stocks in trade.....	none
Schedule B	2—d	Household goods	100.00
Schedule B	2—e	Books, prints and pic- tures	None
Schedule B	2—f	Horses, cows and other animals	None
Schedule B	2—g	Automobiles and other vehicles	None
Schedule B	2—h	Farming stock and implements	None
Schedule B	2—i	Shipping and shares in vessels.....	None
Schedule B	2—j	Machinery, fixtures, and tools.....	None
Schedule B	2—k	Patents, copyrights, and trade-marks.....	None
Schedule B	2—l	Other personal prop- erty	None
Schedule B	3—a	Debts due on open accounts	None
Schedule B	3—b	Policies of insurance..	None
Schedule B	3—c	Unliquidated claims....	None
Schedule B	3—d	Deposits of money in banks and elsewhere	None

Schedule B	4	Property in reversion, remainder, expectancy or trust, etc.....	None
Schedule B	5	Property claimed as exempt (\$3100.00)	
Schedule B	6	Books, deeds and papers	None

Schedule B, total			3100.00
			=====

George O. Cook, Petitioner

(1)

[3]

SCHEDULE A STATEMENT OF ALL DEBTS OF BANKRUPT

Schedule A-1.

Statement of all creditors to whom priority is secured
by the act.

Amount due or Claimed
Dollars Cents

A.—Wages due workmen, servants, clerks, or traveling or city salesmen on salary or commission basis, whole or part time, whether or not selling exclusively for the bankrupt, to an amount not exceeding \$600 each, earned within three months before filing the petition.

Reference to Ledger or Voucher.—Names of Creditors.—Residences (if unknown, that fact must be stated).—When and where incurred or contracted.—Whether claim is contingent, un-

liquidated or disputed.—Nature and consideration of the debt; and whether incurred or contracted as partner or joint contractor and, if so, with whom

None

B.—Taxes due and owing to—(1)The United

States

None

(2) The State of.....

(3) The county, district or municipality of.....

..... State of.....

Reference to Ledger or Voucher.—Names of Creditors.—Residences (if unknown, that fact must be stated).—When and where incurred or contracted.—Whether claim is contingent, unliquidated or disputed.—Nature and consideration of the debt: and whether incurred or contracted as partner or joint contractor and, if so, with whom.

C.—(1) Debts owing to any person, including the United States, who by the laws of the United States is entitled to priority.

None

Reference to Ledger or Voucher.—Names of Creditors.—Residences (if unknown, that fact must be stated).—When and where incurred or contracted.—Whether claim is contingent, unliquidated or disputed.—Nature and consideration of the debt: and whether incurred or contracted as partner or joint contractor and, if so, with whom.

None

C.—(2) Rent owing to a landlord who is entitled to priority by the laws of the State of, accrued within three months before filing the petition, for actual use and occupancy. None

Reference to Ledger or Voucher.—Names of Creditors.—Residences (if unknown, that fact must be stated).—When and where incurred or contracted.—Whether claim is contingent, unliquidated or disputed.—Nature and consideration of the debt: and whether incurred or contracted as partner or joint contractor and, if so, with whom. None

Total None

George O. Cook, Petitioner

(2)

[4]

Schedule A-2.

Creditors Holding Securities

B.—Particulars of securities held, with dates of same, and when they were given, to be stated under the names of the several creditors, and also particulars concerning each debt, as required by the Act of Congress relating to Bankruptcy, and whether contracted as partner or joint contractor with any other person, and if so, with whom.)

Value of Securities		Amount due or Claimed	
Dollars	Cents	Dollars	Cents

Reference to Ledger or Voucher.—
Names of Creditors.—Residences (if unknown, that fact must be stated).

—Description of Securities.—When and where debts were contracted, and nature and consideration thereof.—Whether claim is contingent, unliquidated or disputed.

	None	
	Total	None
George O. Cook, Petitioner (3)		[5]

Schedule A-3

Creditors whose Claims are Unsecured (N. B.—When the name and residence (or either) of any drawer, maker, endorser, or holder of any bill or note, etc., are unknown, the fact must be stated, and also the name and residence of the last holder known to the debtor. The debt due to each creditor must be stated in full, and any claim by way of set-off stated in the schedule of property.)

Amount due or Claimed Dollars Cents

Reference to Ledger or Voucher.—Names of Creditors.—Residences (if unknown, that fact must be stated).—Names and residences contracted.—Whether claim is contingent, unliquidated or disputed.—Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, etc., and whether contracted as partner or joint contractor with any other person; and if so, with whom.

A judgment obtained by Master Lubricants Company, a corporation, in an action in the Superior Court of Los Angeles County, California, being Number 466 250, wherein a Chattel Mortgage was foreclosed and a judgment obtained against George O. Cook and Minnie M. Cook. There is now due, after a sale under execution, which occurred in 1942, the approximate sum of 3281.60

Address of creditor is in care of James P. Clark, attorney for said creditor, at 704-6 Grant Bldg., Los Angeles, Calif.

A judgment entitled Coast Adjustment & Finance Corporation, a corporation, being Number 600 665, in the Municipal Court, City of Los Angeles, California. Zide, Kamens & Zide attorneys for creditor, whose address is 923 Chester Williams Bldg., Los Angeles, California. 97.15

A judgment entitled First Industrial Loan Company of California, a corporation, plaintiffs, being Number 602 287 in the Municipal Court of the City of Los Angeles, California, for Walter H. Sprague Attorney, whose address is 415 Los Angeles Stock Exchange Office Bldg., Los Angeles, California 46.05

Mrs. M. E. Miller, 215 Horizon, Venice California 500.00

Total 3424.80

George O. Cook, Petitioner

Schedule A-4.

Liabilities on Notes or Bills Discounted which ought to be Paid by the Drawers, Makers, Acceptors, or Indorsers. (N. B.—The dates of the notes or bills, and when due, with the names, residences, and the business or occupation of the drawers, makers, acceptors, or indorsers thereof, are to be set forth under the names of the holders. If the names of the holders are not known, the name of the last holder known to the debtor shall be stated, and his business and place of residence. The same particulars shall be stated as to notes or bills on which the debtor is liable as indorser.)

Amount due
or Claimed
Dollars Cents

Reference to Ledger or Voucher.—Names of holders as far as known.—Residences (if unknown, that fact must be stated).—Place where contracted.—Whether claim is disputed.—Nature and consideration of liability, whether same was contracted as partner or joint contractor, or with any other person; and, if so, with whom.

None

Total None

George O. Cook, Petitioner.

Schedule A-5

Accommodation Paper

(N. B.—The dates of the notes or bills, and when due, with the names and residences of the drawers, makers, acceptors, and indorsers thereof, are to be set forth under the names of the holders; if the debtor be liable as drawer, maker, acceptor, or indorser thereof, it is to be stated accordingly. If the names of the holders are not known, the name of the last holder known to the debtor should be stated, with his residence. Give same particulars as to other commercial paper.)

	Amount due or Claimed Dollars Cents
--	---

Reference to Ledger or Voucher.—Names of Holders.—Residences (if unknown, that fact must be stated).—When and where of persons accommodated.—Place where contracted.—Whether claim is disputed.—Whether liability was contracted as partner or joint contractor, or with any other person; and, if so, with whom.

None

	Total None
--	------------

George O. Cook, Petitioner.

Oath to Schedule A

State of California	}	ss
County of Los Angeles		

I, George O. Cook, the person whose name subscribed to the foregoing schedule, do hereby make solemn oath

that the said schedule is a statement of all my debts, in accordance with the Act of Congress relating to bankruptcy, according to the best of my knowledge, information, and belief.

George O. Cook, Petitioner.

Subscribed and sworn to before me this 9th day of June, 1944.

J. Everett Brown,
Notary Public In and for the County of Los Angeles,
State of California.

(Official Character.)

(6) [8]

SCHEDULE B. STATEMENT OF ALL
PROPERTY
Schedule B-1
Real Estate

Estimated
value of
Debtors
Interest
Dollars Cents

Location and Description of all Real Estate owned by Debtor, or held by him, whether under deed, lease or contract.—Incumbrances thereon, if any, and dates thereof.—Statement of particulars relating thereto.

The East 40 feet of the So. 135 feet of Lot 7, of Sunnyside Heights, as per map recorded in Book 8, Page 88 of Maps, in the office of the County Recorder of Los Angeles County, State of California. Acquired on the 6th day

of February, 1939 by George O. Cook and Minnie M. Cook, his wife, who placed a Declaration of Homestead alleging that the actual cash value of the land and premises was \$3000.00

3000.00

That said Declaration of Homestead was recorded on June 22nd, 1940, in Book 17599, at Page 120 of Official Records of Los Angeles County, State of California. And the same has never been revoked.

Total 3000.00

George O. Cook, Petitioner.

(7)

[9]

Schedule B-2

Personal Property

	Dollars	Cents
A.—Cash on hand	None	
<hr/>		
B.—Negotiable and non-negotiable instruments and securities of any description, including stocks in incorporated companies, interests in joint stock companies, and the like (each to be set out separately)	None	
<hr/>		
C.—Stock in trade, in.....business of..... at,, of the value of.....	None	

D.—Household goods and furniture, household stores, wearing apparel and ornaments of the person

The above items, the petitioner claims an exemption under the laws of the State of California 100.00

Total 100.00

George O. Cook, Petitioner.

(8) [10]

Personal Property

	Dollars	Cents
E.—Books, Prints, and Pictures	None	
<hr/>		
F.—Horses, Cows, Sheep, and other animals (with number of each)	None	
<hr/>		
G.—Automobiles and other Vehicles	None	
<hr/>		
H.—Farming Stock and Implements of Husbandry	None	
<hr/>		
Total	None	

George O. Cook, Petitioner.

(9) [11]

Schedule B-2—Continued

Personal Property

	Dollars	Cents
I.—Shipping, and Shares in Vessels	None	
J.—Machinery, fixtures, apparatus, and tools used in business, with the place where each is situated	None	
K.—Patents, Copyrights, and Trade-Marks	None	
L.—Goods or personal property of any other description, with the place where each is situated	None	
Total	None	

George O. Cook, Petitioner.

(10)

[12]

Schedule B-3

Choses in Action

	Dollars	Cents
A.—Debts Due Petitioner on Open Account	None	
B.—Policies of Insurance	None	
C.—Unliquidated Claims of every nature, with their estimated value.	None	
D.—Deposits of Money in Banking Institutions and Elsewhere	None	
Total	None	

George O. Cook, Petitioner.

(11)

[13]

Schedule B-4

Property in reversion, remainder or expectancy, including property held in trust for the Debtor or subject to any power or right to dispose of or to charge.

(N. B.—A particular description of each interest must be entered, with a statement of the location of the property, the names and description of the persons now enjoying the same, the value thereof, and from whom and in what manner debtor's interest in such property is or will be derived. If all or any of the debtor's property has been conveyed by deed of assignment, or otherwise, for the benefit of creditors, the date of such deed should be stated, the name and address of the person to whom the property was conveyed, the amount realized as the proceeds thereof, and the disposal of the same, as far as known to the debtor.)

General Interest.	Particular Description.	Estimate	
		Value of	Interest.
		Dollars	Cents
Interest in Land		None	
Personal Property		None	
Property in Money, Stock, Shares, Bonds, Annuities, etc.		None	
Rights and Powers, Legacies and Bequests		None	
	Total	None	

Property heretofore conveyed for benefit
of creditors.

Amount
realized as
proceeds of
property
conveyed

Portion of debtor's property conveyed by deed of assignment, or otherwise, for the benefit of creditors; date of such deed, name and address of party to whom conveyed; amount realized therefrom, and disposal of same as far as known to debtor.

None

Attorney's Fees.

Sum or sums paid to counsel, and to whom, for services rendered or to be rendered in this bankruptcy.

25.00

Total

25.00

George O. Cook, Petitioner.

(12)

[14]

Schedule B-5

Property claimed as exempt from the operation of the act of Congress relating to bankruptcy.

(N. B.—Each item of property must be stated, with its valuation, and, if any portion of it is real estate, its location, description and present use.)

Valuation
Dollars Cents

Property claimed to be exempt by the laws of the United States, with reference to the statute creating the exemption

None

Property claimed to be exempt by State laws, with reference to the statute creating the exemption.

The East 40 feet of the So. 135 Feet of Lot 7, of Sunnyside Heights, as per map recorded in Book 8, Page 88 of Maps, in the office of the County Recorder of Los Angeles County, State of California. Acquired on the 6th day of February, 1939 by George O. Cook and Minnie M. Cook, his wife, who placed a Declaration of Homestead alleging that the actual cash value of the land and premises was \$3000.00.

3000.00

That said Declaration of Homestead was recorded on June 22nd, 1940, in Book 17599, at Page 120 of Official Records of Los Angeles County, State of California. And the same has never been revoked. It is exempt under Sections 1237 & 1238 of Civil Code of the State of California.

Household goods & furniture, household stores, wearing apparel and ornaments of the person, are exempt under Section 690 to 690.50, Code of Civil Procedure of the State of California.

100.00

Total 3100.00

George O. Cook, Petitioner.

Schedule B-6

Books, Papers, Deeds and Writings relating to Debtor's
Business and Estate

The following is a true list of all books, papers, deeds and writings, relating to petitioner's trade, business, dealings, estate and effects, or any part thereof, which, at the date of this petition, are in petitioner's possession or under petitioner's custody and control, or which are in possession or custody of any person in trust for petitioner, or for petitioner's use, benefit, or advantage; and also of all others which have been heretofore, at any time, in petitioner's possession, or under petitioner's custody, or control, and which are now held by the parties whose names are hereinafter set forth, with the reason for their custody of the same.

	Dollars	Cents
Books	None	
Deeds	None	
Papers	None	

George O. Cook, Petitioner.

Oath to Schedule B

State of California }
County of Los Angeles } ss

I, George O. Cook, the person who subscribed to the foregoing schedule, do hereby make solemn oath that the schedule is a statement of all my property, real and personal, in accordance with the Act of Congress relating to bankruptcy, according to the best of my knowledge, information and belief.

George O. Cook, Petitioner.

Subscribed and sworn to before me this 9th day of June, 1944.

J. Everett Brown,

Notary Public In and for the County of Los Angeles,
State of California.

(Official Character)

(14)

[Endorsed]: Filed Jun. 13, 1944. [16]

United States District Court
Southern District of California

ORDERS OF ADJUDICATION AND
OF GENERAL REFERENCE

At Los Angeles, in said District, on June 13, 1944.

The respective petitions of each of the petitioners in the proceedings hereinafter mentioned, filed on the respective dates hereinafter indicated, that he be adjudged a bankrupt under the Act of Congress relating to bankruptcy, having been heard and duly considered; and there being no opposition thereto;

It is adjudged that each of said petitioners is a bankrupt under the Act of Congress relating to bankruptcy; and

It is thereupon ordered that the said proceedings be, and they hereby are, referred generally to the referees in bankruptcy of this Court, whose names appear opposite the respective proceedings hereinafter mentioned, to take such further proceedings therein as are required and permitted by said Act, and that each of the said bankrupts shall henceforth attend before said referee and submit to such orders as may be made by him or by a Judge of this Court relating to said bankruptcy.

Title of			
Number	Proceedings	Filed	Referee
43,317-Y	George O. Cook	6-13-44	Hugh L. Dickson, Esq., Los Angeles, Calif.

BEN HARRISON
United States District Judge

[Endorsed]: Filed Jun. 13, 1944. [17]

[Title of District Court and Cause.]

In Bankruptcy. No. 43,317-Y.

TRUSTEES REPORT OF EXEMPTED
PROPERTY

At Los Angeles, California, on the 17th day of July, 1944.

The following is a Schedule of Property designated and set apart to be retained by the Bankrupt aforesaid as his own property, under the provisions of the acts of Congress relating to Bankruptcy.

General Head	Particular Description	Value	
		Dollars	Cents
Military Uniform arms and equipment			
Property exempted by State Laws	Household goods and furniture, household stores, wearing apparel and ornaments of the person.	100.00	
	The East 40 feet of the South 135 feet of Lot 7, of Sunnyside Heights, as per map recorded in Book 8, Page 88 of Maps in the office of the County Recorder of Los Angeles County, State of California.	3,000.00	

The Trustee is advised that said real property is located at 1513 West 105th St., Los Angeles, California.

Reported exempt by reason of Declaration of Homestead thereon recorded June 22, 1940, in Book 17599, at Page 120 of Official Records in the office of the County Recorder of Los Angeles County, California.

cc—J. Everett Brown,
319 Wilcox Building,
Los Angeles 12, California
Attorney for Bankrupt.

cc—James P. Clark,
Attorney at Law,
706 Grant Building,
Los Angeles 13, California.

Ignatius F. Parker.

Trustee

[Endorsed]: Filed Jul. 17, 1944. Hugh L. Dickson,
Referee.

[Endorsed]: Filed Feb. 7, 1946. [34]

In the District Court of the United States,
Southern District of California,
Central Division

In Bankruptcy. No. 43,318-Y.

In the Matter of

MINNIE M. COOK,

Bankrupt.

TRUSTEES REPORT OF EXEMPTED
PROPERTY

At Los Angeles, California, on the 17th day of July,
1944.

The following is a Schedule of Property designated and set apart to be retained by the Bankrupt aforesaid as his own property, under the provisions of the acts of Congress relating to Bankruptcy.

General Head	Particular Description	Value	
		Dollars	Cents
Military Uniform arms and equipment			
Property exempted by State Laws	Household goods and furni- ture, household stores, wearing apparel and ornaments of the person.	100	00
	One 1929 Chevrolet Coupe, Li- cense No. 8k4957	70	00

The East 40 feet of the South 135 feet of Lot 7, of Sunnyside Heights, as per map recorded in Book 8, Page 88 of Maps in the office of the County Recorder of Los Angeles County, State of California. 3,000.00

The Trustee is advised that said real property is located at 1513 West 105th St., Los Angeles, California.

Reported exempt by reason of Declaration of Homestead thereon recorded June 22, 1940, in Book 17599, at Page 120 of Official Records in the office of the County Recorder of Los Angeles County, California.

cc.—J. Everett Brown, Attorney for Bankrupt.
319 Wilcox Building,
Los Angeles 12, California.

cc.—James P. Clark, Attorney at Law,
706 Grant Building,
Los Angeles 13, California.

Ignatius F. Parker.

Trustee

[Endorsed]: Filed Jul. 17, 1944. Hugh L. Dickson,
Referee.

[Endorsed]: Filed Feb. 7, 1946. [35]

In the District Court of the United States,
Southern District of California,
Central Division

No. 43,317.-Y.

In the Matter of

GEORGE O. COOK,

Bankrupt.

EXCEPTIONS AND OBJECTIONS BY CREDITOR
TO TRUSTEE'S REPORT OF EXEMPTED
PROPERTY.

To Hugh L. Dickson, Referee in Bankruptcy:

Comes now the Master Lubricants Company, a corporation, a creditor of the above named bankrupt, and objects and excepts to the Report of the Trustee herein, reporting as exempt by state laws, certain real property, therein described, by reason of Declaration of Homestead thereon, recorded June 22, 1940, in Book 17599, at page 120 of Official Records in the office of the County Recorder of Los Angeles County, State of California, which said real property is situate in the City of Los Angeles, County of Los Angeles, State of California, and particularly described as follows, to wit:

The east 40 feet of the South 135 feet of Lot 7 of Sunnyside Heights, as per map recorded in Book 8, page 88 of Maps in the office of the County Recorder of Los Angeles County, State of California,—

Upon the following grounds to wit:

1 That at the date of the recording of said homestead, the said bankrupt, George O. Cook and his wife, Minnie M. Cook, were and now are joint owners of the above described property.

2 That shortly after the recording of said homestead, as above set forth, and on to wit, November 15, 1941, the said bankrupt, George O. Cook, [36] separated from and abandoned his said wife Minnie M. Cook, and removed from said homestead property.

3. That in the forepart of June 1942, the wife of said bankrupt, Minnie M. Cook, commenced an action in the Superior Court of the County of Los Angeles, State of California, against her husband, the above named bankrupt, George O. Cook, for a divorce: that summons and complaint in said action were duly served upon the defendant in said action, the bankrupt, George O. Cook, but that said defendant did not appear in but made default in said action and his default was duly entered therein. That the complaint in said action did not mention any real property as belonging to said parties and did not mentioned and did not claim that there was a homestead thereon.

4 That thereafter and on to wit, June 30th, 1942 an Interlocutory Decree of divorce in said action was made and entered in favor of the plaintiff therein, to wit, Minnie M. Cook. That said Interlocutory Decree did not describe or mention any real property as belonging to the

parties thereto and did not mention and did not make any disposition of the homestead referred to above and set out in the said Report of Trustee.

5 That thereafter and on to wit July 1, 1943 a final decree of divorce was made and entered in said action and the same did not set forth or refer to any real property belonging to the parties to said divorce action and did mention the homestead claimed to be exempt in the said Trustee's Report and did not make any disposition of said homestead.

6 That on or about the 1st day of July, 1943, said homestead set forth and referred to in Trustee's Report, became and was abandoned by both the bankrupt, George O. Cook, and his said wife, Minnie M. Cook, and that at the time of the filing of bankrupt's petition herein, June 13, 1944, said homestead had ceased to exist and the bankrupt George O. Cook, and his former wife Minnie M. Cook, owned said property [37] as joint tenants and not otherwise and that said real property hereinabove described was and is now a part of the assets of the estate of said bankrupt, George O. Cook, and should be applied to the payment of his debts.

7 That this objecting creditor, Master Lubricants Company, a corporation, heretofore and on or about September, 1941, in an action in the Superior Court of Los Angeles County, State of California, obtained and had a judgment against, George O. Cook, the said bankrupt and Minnie M. Cook his then wife, for \$3431.19 and

\$12.25 costs, which said judgment was entered on September 17th, 1941 in Judgment Book 1185, page 228 of the records of the County Clerk of the County of Los Angeles. That partial satisfactions have been made on said judgment and at the date of the filing of petition of bankruptcy here there was still unpaid on said judgment the sum of \$2777.16 for which amount claim has been heretofore filed herein.

Wherefore the Master Lubricants Company, a corporation, a creditor herein prays that these objections and exceptions be sustained and allowed and that the Report of Trustee, so far as it exempts the real property therein and herein described, as being exempt under homestead claimed by bankrupt thereon, be disapproved and rejected and that it be found that said real property is part of the assets of the Bankrupt, George O. Cook, to be used and applied in payment of the debts owing his creditors.

JAMES P. CLARK,

Attorney for Master Lubricants Company, a corporation,
a creditor. [38]

[Verified.]

[Endorsed]: Filed Aug. 7, 1944. Hugh L. Dickson,
Referee.

[Endorsed]: Filed Feb. 7, 1946. [39]

In the District Court of the United States
For the Southern District of California,
Central Division.

In Bankruptcy No. 43,317-Y and No. 43318-Y.

In the Matters of
GEORGE O. COOK and MINNIE M. COOK,
Bankrupts.

FINDINGS OF FACT AND CONCLUSIONS OF
LAW UPON OBJECTIONS OF CREDITOR TO
THE TRUSTEE'S REPORT OF EXEMPTED
PROPERTY.

This matter came on regularly for hearing before the Honorable Hugh L. Dickson, as Referee in Bankruptcy, on September 28th, and by continuance, on October 5, 1944, on Objections and Exceptions of Creditor Master Lubricants Company, a corporation, to the Trustees Report of Exempted property of the Bankrupts, George O. Cook and Minnie M. Cook, and said Bankrupts appearing by their attorney, J. Everett Brown, Esq. and in person, and said Creditor appearing by its attorney, James P. Clark, Esq., and the Trustee of said Bankrupt Estates, Ignatius F. Parker, appearing in person, and it having been stipulated in open Court that the above bankruptcies might be heard and tried together, and the evidence received in one might be considered in the other: and the respective parties having submitted their proofs, both oral and documentary, and said matters having been argued and briefed, and submitted for decision, and the Referee having decided the same, now makes written Findings of Fact and Conclusions of Law, separately stated, [44] as follows:

Findings Of Fact.

I

That the Bankrupts, George O. Cook and Minnie M. Cook, as husband and wife, acquired by grant deed the East 40 feet of the South 135 feet of Lot 7 of Sunnyside Heights, as recorded in Book 8, page 88 of Maps, in the office of the County Recorder of Los Angeles County, State of California, in joint tenancy, and the deed to them was recorded June 24, 1939. That a declaration of homestead, executed by both of said Bankrupts, then husband and wife, was recorded in the Office of the County Recorder of said Los Angeles County, on June 22nd, 1940, covering the above described property.

II

That shortly after the recording of said Homestead, and on November 15, 1941, the husband, George O. Cook, left the Homestead, and deserted his wife, Minnie M. Cook, and removed from said homestead property, and took up his residence at another place in Los Angeles, California.

III

That on the 29th day of May, 1942, the Bankrupt, Minnie M. Cook commenced an action for divorce in the Superior Court of Los Angeles County, State of California, against her husband George O. Cook. That summons and complaint were duly served upon the defendant in said action: that said defendant did not appear in said action but made default and his default

was duly and regularly entered therein. That the complaint in said divorce action did not mention any real property, as belonging to the parties to said action or either of them and did not mention and did not claim a homestead on any real property and did not claim any homestead rights.

That thereafter and on to wit, June 30, 1942, *and* Interlocutory Decree of Divorce between the parties was made and entered in said action and that no real property was set out or mentioned in said decree, as belonging to the parties to said action or either of them, [45] and did not mention and did not make any disposition of the homestead hereinabove referred to and or set out in the Trustee's Report of Exemptions.

That thereafter and on July 1, 1943 a final decree of divorce was made and entered in said action and said decree did not describe or mention any real property, as belonging to the parties to said action, the bankrupts herein, and did not mention and did not make any disposition of the homestead set out and described in the Trustee's Report as exempt.

IV

That the bankrupt, Minnie M. Cook, continued to reside upon the homestead, after her husband, George O. Cook, left her, until about March 1943, with her minor daughter, Lila Corine Cook, when she moved away from said homestead and has not since returned thereto or resided thereat. That the bankrupt George O. Cook, re-

turned to the homestead about March 1943, and resided thereat with his minor daughter, Lila Corine Cook, up until seven days prior to October 4, 1944, when said minor daughter went back to live with her mother, at a place other than the homestead and has continued since to reside with her mother away from said homestead. That at the time said divorce action was commenced said minor was 16 and is now 19 years of age. That shortly after the final decree was entered on July 1, 1943, George O. Cook re-married and brought his second wife to live with him on said homestead and they have continued to live thereon and they did live on said homestead property at the time of the filing of this bankruptcy proceeding, to wit June 13, 1944. That the schedules filed by both bankrupts, George O. Cook and Minnie M. Cook, claimed the hereinabove described real property as exempt homesteaded property. That said real property is still held and owned jointly.

V

That at the date of the filing of the petitions in bankruptcy [46] herein, said bankrupts were indebted to the objecting Creditor, Master Lubricants Company, a corporation in the sum of \$2777.16, and a claim for this amount was allowed and filed herein.

And as Conclusions of Law the Referee *fns*:

Conclusions Of Law.

I

That the Homestead of the Bankrupts, declared on jointly held property, did not become abandoned, by reason of the divorce between the parties, under the findings of Fact herein.

II

That the objections and exceptions of the Creditor, Master Lubricants Company, a corporation to the Trustee's Report, should be overruled and said Report approved.

Let judgment be entered accordingly.

Dated this 31st day of December, 1945.

HUGH L. DICKSON,
Referee in Bankruptcy.

Approved as to form:

J. EVERETT BROWN,
Attorney for Bankrupts.

JAMES P. CLARK,
Attorney for creditor, Master Lubricants
Company, a corporation.

Dated December 28, 1945.

[Endorsed]: Filed Dec. 31, 1945. Hugh L. Dickson,
Referee.

[Endorsed]: Filed Feb. 7, 1946. [47]

[Title of District Court and Cause.]

In Bankruptcy No. 43,317-Y and No. 43,318-Y.

ORDER OVER-RULLING OBJECTIONS AND EXCEPTIONS OF CREDITOR TO REPORT OF TRUSTEE ALLOWING EXEMPTIONS OF BANKRUPTS AND APPROVING AND AFFIRMING REPORT.

This matter came on for hearing, pursuant to notice, before the Honorable Hugh L. Dickson, Referee in Bankruptcy, on September 28th, and by continuance, on October 5th, 1944, on Objections and Exceptions of Creditor, Master Lubricants Company, a corporation, to the Trustee's Report of exempted property of the Bankrupts, George O. Cook and Minnie M. Cook, and said Bankrupts appearing in person and by their attorney, J. Everett Brown, Esq., and said Creditor appearing by its attorney, James P. Clark, Esq., and the Trustee of said bankrupt estates, Ignatius F. Parker, appearing in person, and it having been stipulated in open Court that the above bankruptcies might be heard and tried together, and the evidence received in one might be considered in the other: and the respective parties having submitted their proofs, both oral and documentary, and said matters having been argued and briefed, and submitted for decision, and the Referee having decided the same and made and filed his Findings of Fact and [48] Conclusions of Law, Now in accordance therewith and with the law,

It Is Ordered And Adjudged, that the objections and exceptions of the Creditor, Master Lubricants Company, a corporation, be and hereby are over-ruled and said Trustees Report approved and allowed: And that the Homestead of the Bankrupts, declared on jointly held property, did not become abandoned by reason of the divorce between the bankrupts.

Dated this 31st day of December, 1945.

HUGH L. DICKSON,
Referee in Bankruptcy.

Approved as to form:

J. EVERETT BROWN,
Attorney for Bankrupts.

JAMES P. CLARK,
Attorney for creditor, Master Lubricants
Company, a corporation.

Dated December 28, 1945.

[Endorsed]: Filed Dec. 31, 1945. Hugh L. Dickson,
Referee.

[Endorsed]: Filed Feb. 7, 1946. [49]

[Title of District Court and Cause.]

In Bankruptcy No. 43,317-Y and No. 43,318-Y.

PETITION FOR REVIEW OF REFEREE'S
ORDER BY JUDGE.

To Hugh L. Dickson, Referee In Bankruptcy:

Comes now the Petitioner, Master Lubricants Company, a corporation, a Creditor of the above named bankrupts, and presents:

1. That your Petitioner is a Creditor of the above named Bankrupts, George O. Cook and Minnie M. Cook, on an allowed claim for balance of judgment, in the sum of \$2777.16.

2. That on the 13th day of June, 1944, each of said Bankrupts, filed their petitions in bankruptcy, herein, with Schedules attached and each of said Bankrupts claimed certain real property to be exempt from claims of creditors, by virtue of a homestead theretofore recorded in the office of the County Recorder of Los Angeles County, California, in which said county said real property is situated, and which is particularly described as follows:

“The East 40 feet of the South 135 feet of Lot 7, of Sunnyside Heights, as per map recorded in Book 8, at page 88 of Maps, in the [50] office of the County Recorder of Los Angeles County, State of California.

3. That at the first meeting of the Creditors of said bankrupts, on July 11th, 1944, Ignatius F. Parker, was appointed Trustee in said bankruptcies and on the 17th of July, 1944, filed herein his Report of Exempted Prop-

erty, wherein the above described real property of the Bankrupts was reported as exempt and designated and set apart to be retained by the bankrupts as his or her own property, under the provisions of the acts of Congress relating to Bankruptcy.

4 That thereafter, and within the time provided by law, and the order of Referee extending time, on to wit, August 7, 1944, Petitioner, served and filed, its Objections and Exceptions to said Trustee's Report in each of said bankruptcies, as follows:

(Caption omitted)

“Exceptions and Objections by Creditor to Trustee's Report of Exempted Property.

To Hugh L. Dickson, Esq., Referee in Bankruptcy:

Comes now the Master Lubricants Company, a corporation, a creditor of the above named bankrupt, and objects and excepts to the Report of the Trustee herein, reporting as exempt by state laws, certain real property, therein described, by reason of Declaration of Homestead thereon, recorded June 22, 1940 in Book 17599, at page 120 of Official Records in the office of the County Recorder of Los Angeles, State of California, which said real property is situated in the City of Los Angeles, County of Los Angeles, State of California, and particularly described as follows, to wit:

The east 40 feet of the south 135 feet of Lot 7 of Sunnyside Heights, as per map recorded in Book 8, page 88 of Maps in the Office of the County Recorder of Los Angeles County, State of California,— [51]

Upon the following grounds, to wit:

1 That at the date of the recording of said homestead, the said bankrupt, Minnie M. Cook and her husband, George O. Cook, were and now are joint owners of the above described property.

2 That shortly after the recording of said homestead, as above set forth, and on November 15, 1941, the husband of this bankrupt, Minnie M. Cook, to wit, George O. Cook, separated from and deserted his said wife, Minnie M. Cook, and removed from said homestead property.

3 That in the forepart of June, 1942, the bankrupt herein, commenced an action for divorce from her said husband, George O. Cook, in the Superior Court of the County of Los Angeles, State of California. That summons and complaint in said action were duly served upon the defendant in said action, the said George O. Cook: that said defendant did not appear in said action but made default and his default was duly and regularly entered therein. That the complaint in said divorce action did not mention any real property as belonging to said parties or either of them and did not mention and did not claim that there was a homestead thereon and did not claim any homestead rights.

4 That thereafter and on to wit, June 30th, 1942, an Interlocutory Decree of Divorce was made and entered in said action in favor of the plaintiff therein, the bankrupt herein. That no real property was set out or described in said Interlocutory Decree, as belonging to the parties therein, and did not mention and did not make any disposition of the homestead hereinabove referred to and set out in Trustee's Report on exemptions.

5 That thereafter and on to wit, July 1, 1943, a final decree of divorce was made and entered in said action, and the same did not describe, mention or set forth description of any real property as belonging to the parties to said divorce action and did not mention the homestead claimed to be exempt in said Trustee's Report, and did not make any disposition of said homestead.

6. That on or about the 1st day of July, 1943, said homestead set [52] forth and referred to in said Trustee's Report as exempt, became and was abandoned by both the bankrupt, Minnie M. Cook, and her said husband George O. Cook, and that at the time of the filing of bankrupt's petition herein, June 13, 1944, said homestead had ceased to exist, and the bankrupt, Minnie M. Cook, and her former husband, George O. Cook, owned said property as joint tenants and not otherwise, and that said real property hereinabove and in said Trustee's Report described is now a part of the assets of the said bankrupt's estate, and should be applied to the payment of her debts.

7 That this objecting creditor, Master Lubricants Company, a corporation, heretofore and on or about September 17, 1941, in an action in the Superior Court of the County of Los Angeles, State of California, had and obtained a judgment against Minnie M. Cook, the bankrupt and George O. Cook, her husband for \$3431.19 and \$12.25 costs, which said judgment was entered September 17, 1941, in judgment Book 1185, page 228, of the Records of the County Clerk of Los Angeles County, California. That partial satisfactions have been made on said judgment and at the date of the filing of petition of bankrupt herein, there was still unpaid on said judg-

ment the sum of \$2777.16, for which amount claim has been heretofore filed herein.

Wherefore the Master Lubricants Company, a corporation, a creditor herein, prays that these objections and exceptions be sustained and allowed and that the Report of the Trustee, as far as it exempts the real property therein and hereinabove described, as being exempt under the homestead thereon claimed by bankrupt, be disapproved and rejected and that it be found that said real property is part of the assets of the bankrupt, Minnie M. Cook, to be used and applied on debts of bankrupt, owing to creditors, and costs.

James P. Clark,

Attorney for Master Lubricants Company, a corporation,
a creditor”

(Duly verified) [53]

5 That said Objections and Exceptions to Trustee's Report, was thereafter heard by Hon. Hugh L. Dickson, Referee in Bankruptcy, pursuant to due notice, on September 28th and October 5th, 1944, and upon stipulation in open Court, both bankruptcy matters were tried and considered together, and the respective parties having submitted their proofs, both oral and documentary, and the said matter having been argued and submitted and decided by said Referee, and he thereafter and on December 31, 1945, made and filed written findings of fact and conclusions of law, and did on the same date make, file and

enter an order pursuant thereto, which said order is as follows,—

“J. Everett Brown,
319 Wilcox Building,
Los Angeles, 12, California,
Mu 5929,
Attorney for Bankrupts.

In The District Court Of The United States
For The Southern District Of California
Central Division.

In Bankruptcy No. 43,317-Y and No. 43,318-Y

In the Matters of George O. Cook and Minnie M. Cook, Bankrupts.

Order over-ruling objections and exceptions of Creditor to Report of Trustee allowing exemptions of Bankrupts and approving and affirming Report.

This matter came on for hearing, pursuant to notice, before the Honorable Hugh L. Dickson, Referee in Bankruptcy, on September 28th, and by continuance, on October 5th, 1944, on Objections and Exceptions of Creditor, Master Lubricants Company, a corporation, to the Trustee's Report of exempted property of the Bankrupts, George O. Cook and Minnie M. Cook, and said Bankrupts appearing in person and by their attorney, J. Everett Brown, Esq., and said Creditor appearing by its attorney, James P. Clark, Esq., and the Trustee of said bankrupt estates, Ignatius F. Parker, appearing in person, and it

having been stipulated in open Court that the above bankruptcies might be heard and tried together, [54] and the evidence received in one might be considered in the other; and the respective parties having submitted their proofs, both oral and documentary, and said matters having been argued and briefed, and submitted for decision, and the Referee having decided the same and made and filed his Findings of Fact and Conclusions of Law, Now in accordance therewith, and with the law,

It Is Ordered And Adjudged, that the objections and exceptions of the Creditor, Master Lubricants Company, a corporation, be and hereby are over-ruled and said Trustee's Report approved and allowed;

And that the homestead of the Bankrupts, declared on jointly held property, did not become abandoned by reason of the divorce between the Bankrupts.

Dated this 31st day of December, 1945.

Hugh L. Dickson
Referee in Bankruptcy.

Approved as to form:

J. Everett Brown,
Attorney for Bankrupts.

James P. Clark,
Attorney for creditor, Master Lubricants
Company, a corporation.

Dated December 28, 1945."

6 That said order is erroneous and should be set aside for the following reasons:

(a) That the same is not supported by the Findings of Facts and is contrary thereto.

(b) That the same is contrary to the evidence showing an abandonment of the homestead in the divorce proceedings between the bankrupts.

(c) That the same is contrary to law.

(d) That the Findings of Fact show an abandonment of the homestead by removal and absence therefrom, by both bankrupts.

(e) That the bankrupt, George O. Cook, abandoned his wife, Minnie M. Cook, and the homestead November 15, 1941, and did not return to the homestead until March 1943; and the bankrupt [55] Minnie M. Cook, left the homestead, in March, 1943, and shortly before her former husband moved back thereto, and has not resided thereat at any time since, as shown by the Findings of Fact.

(f) That shortly after July 1, 1943, the bankrupt George O. Cook re-married and at the time of the trial of this matter was living thereat with his second wife only, and the second wife is not shown to have any homestead rights in the property involved, as shown by the Findings of Fact.

(g) That the evidence and the facts as found show that the property in question is jointly owned by the bankrupts, at all times since acquired in 1938, and that

the homestead became abandoned prior the time of the filing of the petitions in bankruptcy herein.

Wherefore your Petitioner prays that a writ of review be granted and for a review of said order by the Judge of the said United States District Court, and that said order be vacated and set aside and the Referee directed to sustain the objections and exceptions to the Report of the Trustee, and to declare the homestead property subject to the payment of creditors of said Bankrupts; and for such other and further orders as may be proper in the premises.

Dated February 1st, 1946.

MASTER LUBRICANTS COMPANY, a corporation,

By WILLIAM L. HAGENBAUGH, President.

JAMES P. CLARK,

Attorney for Petitioner.

[Verified.]

[Endorsed]: Filed Feb. 1, 1946. Hugh L. Dickson,
Referee.

[Endorsed]: Filed Feb. 7, 1946. [56]

[OBJECTING CREDITOR'S EXHIBIT 1.]

In the Superior Court of the State of California
in and for the County of Los Angeles

No. D221735

Minnie Marie Cook, Plaintiff, vs. George Oscar Cook,
Defendant.

COMPLAINT FOR DIVORCE

Plaintiff complains and alleges:

I.

That the plaintiff herein is and has been a resident of the State of California for more than one year last past and of the County of Los Angeles for more than three months immediately preceding the commencement of this action.

II.

Plaintiff alleges for the statistical purposes required by section 426a of the Code of Civil Procedure of the State of California the following facts to wit:

1. That plaintiff and defendant intermarried at Los Angeles, California.

2. That the date of marriage was on or about the 26th day of August, 1922.

3. That the date of separation was on or about the 15th day of November 1941. [57]

4. That the time from marriage to separation was nineteen years, two months and twenty days.

5. That there are three children, the issue of this marriage, to wit: Fred William Cook age nineteen, George

Ernest Cook age seventeen and Lila Lorine Cook age sixteen.

III.

That there is no community property.

IV.

That during the married life of the parties hereto the defendant has inflicted upon plaintiff a course of conduct amounting to extreme cruelty.

V.

That said extreme cruelty on the part of the defendant was not caused or provoked by plaintiff and was at all times against her will and without her consent.

VI.

That said extreme cruelty on the part of the defendant has caused plaintiff great and grievous mental and physical suffering.

VII.

That the defendant George Oscar Cook is an able bodied man able to earn sufficient money to support his wife and children. That the one son Fred William Cook age nineteen is in the United States Army. That the son George Ernest Cook age seventeen and daughter Lila Lorine Cook age sixteen are residing with the plaintiff herein and attend school. That the plaintiff herein is not employed, that she has no means of support other than such moneys that are contributed to her by the defendant herein; nor does the plaintiff have any moneys to employ an attorney and prosecute this action.

Wherefore, Plaintiff prays judgment that the bonds of matrimony between the plaintiff and defendant be dissolved. That the plaintiff be awarded the care and custody of the minor children hereto. [58] That the defendant be required to pay plaintiff a reasonable sum for the support of herself and two minor children, and a reasonable sum of money for attorney's fees in this action for costs of suit and for such other and further relief as to the Court may seem meet and proper.

ROY C. KAISER,
Roy C. Kaiser,
Attorney for Plaintiff. [59]

In this action the Defendant George Oscar Cook having been regularly served with process, and having failed to appear and answer the plaintiff's complaint, on file herein, and the time allowed by law for answering having expired, the default of said defendant, in the premises is hereby duly entered according to law.

Attest: My hand and the seal of the Court this 16 day of Jun 1942.

J. F. MORONEY, County Clerk.
By H. E. Stevens, Deputy.

[Verified.]

[Endorsed]: Filed May 29, 1942, 10:22 A. M. J. F. Moroney, County Clerk; by M. Enfield, Deputy. [60]

[Title of Superior Court and Cause.]

No. D221735

Action brought in the Superior Court of the County of Los Angeles, and.....Complaint filed in the Office of the Clerk of the Superior Court of said County.

SUMMONS

The People of the State of California Send Greetings To:
George Oscar Cook, Defendant.

You are directed to appear in an action brought against you by the above named plaintiff in the Superior Court of the State of California, in and for the County of Los Angeles, and to answer the.....Complaint therein within ten days after the service on you of this Summons, if served within the County of Los Angeles, or within thirty days if served elsewhere, and you are notified that unless you appear and answer as above required, the plaintiff will take judgment for any money or damages demanded in the.....Complaint, as arising upon contract, or will apply to the Court for any other relief demanded in the.....Complaint.

Given under my hand and seal of the Superior Court of the County of Los Angeles, State of California, this 29th day of May, 1942.

J. F. MORONEY,

County Clerk and Clerk of the Superior Court of the
State of California, in and for the County of Los
Angeles.

By M. Enfield, Deputy.

(Seal Superior Court
Los Angeles County)

Appearance: "A defendant appears in an action when he answers, demurs, or gives the plaintiff written notice of his appearance, or when an attorney gives notice of appearance for him." (Sec. 1014, C. C. P.)

Answers or demurrers must be in writing, in form pursuant to rule of court, accompanied with the necessary fee, and filed with the Clerk. [61]

[Affidavit of Service.]

[Endorsed]: Filed Jun. 16, 1942. [62]

[Title of Superior Court and Cause.]

No. D221735

REQUEST FOR ENTRY OF DEFAULT

To the Clerk of Said Court:

The defendant George Oscar Cook having been regularly served with process, and having failed to appear and answer the plaintiff's complaint on file herein, and the time allowed by law for answering having expired, application is hereby made that you enter the default of said defendant, herein according to law.

Roy C. Kaiser,
Attorney for Plaintiff.

Dated the 16 day of June, 1942.

[Endorsed]: Filed Jun. 16, 1942. [63]

Note: It is not necessary that Every question be answered. Affiant may answer such questions as he is able and allege any additional facts (which may, if necessary, be set forth on an attached sheet) showing that defendant is not in military service.

[Endorsed]: Filed Jun. 30, 1942. [64]

In the Superior Court of the State of California
in and for the County of Los Angeles

No. D221735

Minnie Marie Cook, Plaintiff, vs. George Oscar Cook,
Defendant.

INTERLOCUTORY JUDGMENT OF DIVORCE
(Default)

This cause came on to be heard before Honorable Samuel R. Blake, Judge presiding in Department 10, on the 30th day of June, 1942, Roy C. Kaiser appearing as attorney for plaintiff, and it appearing that defendant was duly served with process and has not appeared or answered the complaint, and that the default of defendant has been entered; and evidence having been introduced on the part of plaintiff, and said cause having been duly submitted to the Court for decision:

It Is Adjudged that plaintiff is entitled to a divorce from defendant; that when one year shall have expired after the entry of this interlocutory judgment a final judg-

ment dissolving the marriage between plaintiff and defendant be entered, and at that time the Court shall grant such other and further relief as may be necessary to complete disposition of this action.

The care custody and control of the three minor children of the parties hereto is hereby awarded to the plaintiff herein. The defendant is hereby ordered to pay to plaintiff herein, the sum of \$16.00 per week for the care and

[MacG]

maintenance of plaintiff and ~~minor children, payable each week beginning as of June 29, 1942~~ two of the minor children, George Ernest Cook and Lila Lorine Cook, payable each week commencing as of June 29, 1942. Defendant is allowed visitations.

Done in open Court this 30th day of June, 1942.

Samuel R. Blake

.....

Judge.

Notice—Caution. This is not a Judgment of Divorce. The parties are still husband and wife, and will be such until a final Judgment of Divorce is entered after one year from the entry of this Interlocutory Judgment. The final Judgment will not be entered unless requested by one of the parties.

Entered Jun. 30, 1942. Docketed Jul. 1, 1942, Book 1262, page 17, by M. Valenzuela, Deputy.

[Endorsed]: Filed Jun. 30, 1942. [65]

AGREEMENT

This Agreement made and entered into this 29th day of June, 1942, by and between George Oscar Cook of the City of Los Angeles, County of Los Angeles, State of California, herein called the party of the first part, and Minnie Marie Cook, his wife, of the same place, herein called the party of the second part,

Witnesseth:

That the parties hereto are now husband and wife; and Whereas unhappy differences have arisen and do now exist between them; and,

Whereas the parties hereto are now desirous of making settlement out of Court of the property rights as well as a settlement of all expenses, alimony and attorney's fees;

Now Therefor, in consideration of the mutual covenants on the part of the parties hereto and for the purpose of settling all claims of the parties hereto, the said party of the second part agrees to release all of her interest in and to any property that the party of the first part may hereafter accumulate.

It Is Further Understood and agreed that the party of the first part shall pay to the party of the second part for the support of herself and the minor children of the parties hereto, the sum of Sixteen Dollars (\$16.00) per week, beginning June 29, 1942.

That the party of the first part pay to Roy C. Kaiser Attorney for the party of the second part, the sum of One hundred dollars (\$100.00). [66]

That the said party of the second part shall have the household furniture and furnishings and same shall constitute her sole and separate property.

Said party of the first part hereby waives, releases and relinquishes all rights, claims and obligations of any character which he may have against the party of the second part and waives, releases and relinquishes any claims he may have in and to any property that the party of the second part may have or acquire hereafter in which he may have or claim to have an interest by reason of the marital relationship existing between them. Said party of the first part waives all right or claims of inheritance from the estate of the party of the second part and all rights to administer the same.

Said party of the second part hereby waives, releases and relinquishes all rights, claims and obligations of any kind or character which she may have against the said party of the first part and waives, releases and relinquishes any claims that she may have or claim to have an interest by reason of the marital relationship existing between them.

Said party of the second part waives any right or claims of inheritance from the estate of the said party of the first part and all rights to administer the same.

In Consideration Of The Foregoing the said party of the second part hereby agrees to accept said furniture and furnishings and other payments of money as aforesaid

in full of any claim or right that she may have to support, alimony or attorney's fees.

It Is Further Understood and agreed by and between [67] the parties hereto that in any action that may be pending or in any action that hereafter may be instituted by either of the parties hereto, either for divorce, separate maintenance or otherwise the Court may make and order conforming to the terms of this agreement.

It Is Further Agreed by and between the parties hereto and they hereby agree to execute and accept any and all necessary papers, deeds, assignments or documents to pass title in accordance with this agreement.

In Witness Whereof the parties hereto set their names and seals the day and year first above written.

GEORGE OSCAR COOK

Party of the First part.

MINNIE MARIE COOK

Minnie M. Cook

Party of the Second part. [68]

[Certificate of Notary.]

Case No. D221735. Plff. Exhibit One. Filed Jun. 30, 1942. J. F. Moroney, County Clerk; by J. MacGregor, Deputy. [69]

In the Superior Court of the State of California
in and for the County of Los Angeles

No. D221735

Minnie Marie Cook, Plaintiff, vs. George Oscar Cook,
Defendant.

FINAL JUDGMENT OF DIVORCE

In this cause an interlocutory judgment was entered on the 30 day of June, 1942, adjudging that plaintiff was entitled to a divorce from defendant, and more than one year having elapsed, and no appeal having been taken from said judgment, and no motion for a new trial having been granted and the action not having been dismissed;

Now, upon the Court's own motion, it is adjudged that plaintiff be and is granted a final judgment of divorce from defendant and that the bonds of matrimony between plaintiff and defendant be, and the same are, dissolved.

It is further ordered and adjudged that wherein said interlocutory judgment makes any provision for alimony or the custody and support of children, said provision be and the same is hereby made binding on the parties affected thereby the same as if herein set forth in full, and that wherein said interlocutory judgment relates to the property of the parties hereto, said property be and the same is hereby assigned in accordance with the terms thereof to the parties therein declared to be entitled thereto.

Done in open Court this 1st day of July, 1943.

WM. S. BAIRD, Judge.

Filed at request of Minnie Marie Cook.

(Strike out two and sign in ink—
~~Attorney-Plaintiff-Defendant~~)

Address 5515½ S. Broadway Apt #2
Los Angeles, Calif.

This Judgment is not effective until entered in Judgment Book by Clerk

Entered Jul. 1, 1943. Docketed Jul. 2, 1943, Book 1343, page 175, by N. Rosenblatt, deputy.

[Endorsed]: Filed Jul. 1, 1943.

MINNIE MARIE COOK vs GEORGE OSCAR COOK,

No. D 221735

State of California, County of Los Angeles—ss.

I, J. F. Moroney, County Clerk and ex-officio Clerk of the Superior Court within and for the county and state aforesaid, do hereby certify the foregoing to be a correct copy of the original Complaint for Divorce, filed May 29th, 1942; Summons, filed June 16th, 1942; Request for Entry of Default, filed June 16th, 1942; omitting Setting Card, dated June 16th, 1942; Affidavit, filed June 30th, 1942, Interlocutory Judgment of Divorce, filed June 30th, 1942; and thereafter entered June 30th, 1942,

in Book 1262, at Page 17 of Judgments; Copy of Plaintiff's Exhibit One (Copy of Agreement) filed June 30th, 1942; and Final Judgment of Divorce, filed July 1st, 1943; and thereafter entered July 1st, 1943, in Book 1343, at Page 175 of Judgments, on file and/or of record in my office, and that I have carefully compared the same with the original.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Superior Court this 18th day of September 1944.

(Seal) J. F. MORONEY, County Clerk.

By Lulu G. Morris, Deputy.

[Endorsed]: No. 43317-Y & 43318-Y. Re: George O. Cook, Bankrupt; Minnie M. Cook, Bankrupt. Obj. Cred. Exhibit No. 1. Filed 9-28-44. Hugh L. Dickson, Referee. [70]

In the District Court of the United States
For the Southern District of California
Central Division

In Bankruptcy No. 43,317-Y and No. 43,318-Y.

In the Matters of

GEORGE O. COOK
and
MINNIE M. COOK

Bankrupts.

REFEREE'S CERTIFICATE ON REVIEW

To The Honorable Leon R. Yankwich, Judge of the District Court of the United States, Southern District of California, Central Division:

I, HUGH L. DICKSON, one of the referees of the above Court, do hereby certify that in the course of the proceedings in the above entitled matters, before me, upon hearings of the Objections and Exceptions of the Master Lubricants Company, a corporation, to Trustee's Report of Exempted Property, setting aside certain real property for the Bankrupts, as exempted under the homestead law of the State of California, which said Objections and Exceptions were verified and filed within time, the following questions were presented:

(a) Where the Bankrupts, then husband and wife, acquired the real property in question, as joint tenants, by deed recorded June 24, 1939, and thereafter filed and recorded a Declaration of [71] Homestead thereon June 22, 1940, all in the County of Los Angeles, State of California, wherein said property is situated, and thereafter and on November 15, 1941, the husband, George O. Cook,

left the homestead and deserted his wife, the said Minnie M. Cook, and took up his residence elsewhere; and thereafter and on May 29, 1942, the wife commenced an action for divorce from her said husband; that the said husband was duly served with summons and complaint, but made no answer and suffered his default to be entered, and that thereafter and on June 30, 1942 an Interlocutory Decree of Divorce was made and entered, and on July 1, 1943, a final Decree of Divorce was made and entered in said action; and neither in the complaint in said action, the Interlocutory Decree nor the Final Decree, is the Homestead or rights of the parties therein, or the real property covered by said Homestead, mentioned or in any way disposed of, was there an abandonment of the Homestead by the former husband and wife, the bankrupts herein?

(b) Where it is shown that the wife left the homestead in March, 1943, and thereupon the husband returned to the homestead in March, 1943 and continued to live thereat, up to the time of the filing of the bankruptcy petitions herein June 13, 1944, and thereafter up to the time of the hearings of said Objections and Exceptions of Creditor, September 28 and October 5, 1944, would this have any effect on the question of abandonment, and, if so, what?

(c) Where it is shown that when the husband returned to the Homestead in March 1943, a minor daughter of the Bankrupts lived thereat with him, up until shortly prior to September 28, 1944, and that shortly after the entry of the Final Decree of Divorce, July 1, 1943, the husband remarried and his second wife lived with him on the Homestead, what if any effect did these facts have on the question of abandonment of the homestead? Did

the fact of the residence of the minor child with the father on [72] the homestead prevent an abandonment in law, under the conditions of the pleading and decrees in the divorce action, or did the residing of the second wife thereat with the husband have any effect in the continuance of the homestead?

(d) Where it is shown that the wife, Minnie M. Cook, left the homestead in March, 1943 and has never lived thereat since, is there an abandonment by her of the homestead, under the conditions of the pleading and decrees in the divorce action?

Hearing of evidence and arguments of law were heard on September 28, 1944 and October 5, 1944 and matter submitted, and thereafter and on December 31, 1945, I made and filed written Findings of Fact and Conclusions of law, hereunto annexed, and on December 31, 1945, made and entered, pursuant thereto, the following order:

(Omitting caption and preamble)

“It Is Ordered And Adjudged, that the objections and exceptions of the Creditor, Master Lubricants Company, a corporation, be and hereby are overruled and said Trustee’s Report approved and allowed;

“And that the Homestead of the Bankrupts, declared on jointly held property, did not become abandoned by reason of the divorce between the bankrupts.

Dated this 31st day of December, 1945.

HUGH L. DICKSON

Referee in Bankruptcy.

Approved as to form:

J. Everett Brown,
attorney for bankrupts.

James P. Clark,
attorney for creditor, Master
Lubricants Company, a corporation.

Dated December 28, 1945."

And that thereafter and on the 1st day of February, 1946, and within time provided by law and extension of time granted, the [73] Creditor, Master Lubricants Company, a corporation, served and filed its Petition for a review of said order by the Judge.

Attached to this Certificate are the following documents:

1. Trustee's Reports of Exempted Property (George O. Cook and Minnie M. Cook estates).
2. Exceptions and Objections by Creditor thereto (George O. Cook and Minnie M. Cook estates).
3. Memorandum Opinion on Objections to Reports of Exempted Property.
4. Findings of Fact and Conclusions of Law.
5. Order pursuant thereto.
6. Petition for Review of Referee's order by Judge.
7. Reporter's Transcript of Evidence.
8. All exhibits offered and received in evidence (1 to 5 inclusive).

Dated: This 7th day of February, 1946.

HUGH L. DICKSON

Referee in Bankruptcy.

[Endorsed]: Filed Feb. 7, 1946. [74]

In the District Court of the United States
For the Southern District of California,
Central Division.

No. 43317-Y, No. 43318-Y.

In the Matter of

GEORGE O. COOK,

Bankrupt,

and

MINNIE M. COOK,

Bankrupt.

ORDER AFFIRMING ORDER OF REFEREE.

The Master Lubricants Company, a Corporation, having filed its Petition for Review of the Order of Referee Hugh L. Dickson dated December 31st, 1945, and the said matter coming on duly to be heard before the undersigned, Judge of the United States District Court, on April 1st, 1946 at 2:00 o'clock P. M., the said Master Lubricants Company, a Corporation, appearing by James P. Clark, Esq., its Attorney, and the said George O. Cook and Minnie M. Cook, appearing by George Gardner, Esq., their Attorney and the Court having considered the matter and having heard the arguments of counsel, and being full advised in the premises, good cause appearing,

It Is Ordered That the Petition of said objecting creditor, Master Lubricants Company, a Corporation, be and the same is hereby denied and said Order of Referee Hugh L. Dickson [75] dated December 31st, 1945, over-

ruling the objections and exceptions of the said Creditor, Master Lubricants Company, a Corporation, to the report of Trustee allowing exemptions of Bankrupts, and approving and affirming Report, be and the same is hereby affirmed.

Dated: April 5th, 1946.

LEON R. YANKWICH

Judge of the United States District Court.

Approved as to form:

James P. Clark

Attorney for Master Lubricants

Company, a Corporation, Petitioner.

Presented by:

George Gardner

Atty. for George O. Cook and

Minnie M. Cook.

Judgment entered Apr. 5, 1946. Docketed Apr. 5, 1946, C. O. Book 37, Page 589. Edmund L. Smith, Clerk; By John A. Childress, Deputy.

Notation made in Bankruptcy Docket on 4/5/46 pursuant to Rule 79(a), Civil Rules of Procedure.

John A. Childress,

Deputy Clerk.

[Endorsed]: Filed Apr. 5, 1946. [76]

[Title of District Court and Cause.]

No. 43317-Y, No. 43318-Y.

NOTICE OF APPEAL TO THE CIRCUIT
COURT OF APPEALS.

Notice Is Hereby Given that Master Lubricants Company, a corporation, a creditor of the above named Bankrupts, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit, from that certain order and judgment, made and entered in the above entitled matters, on the 5th day of April, 1946, in the above United States District Court, denying the Petition of said creditor for a review of and affirming that certain order made and entered by Hugh L. Dickson, Esq., Referee in Bankruptcy, on December 31, 1945, overruling exceptions and objections of said creditor to the Trustee's Report of Exempted Property, allowing as exempt to said Bankrupts certain real property, on which Bankrupts claimed a homestead, approving said Report, and adjudging that said homestead did not become abandoned by reason of a divorce between said Bankrupts.

Dated this April 3, 1946.

JAMES P. CLARK
Attorney for Appellant.

[Endorsed]: Filed and mld copy to George Gardner, Atty. for Bkpts., May 3, 1946. [77]

[Title of the District Court and Cause.]

No. 43317-Y, No. 43318-Y.

UNDERTAKING FOR COSTS ON APPEAL

Know All Men By These Presents:

That the United States Fidelity and Guaranty Company of Maryland, a corporation organized and existing under the laws of the State of Maryland, and duly licensed to transact business in the State of California, is held and firmly bound unto George O. Cook and Minnie M. Cook, bankrupts in the above entitled matter, in the plenary sum of Two Hundred Fifty (\$250.00) Dollars, to be paid said bankrupts, their heirs and assigns; for which payments, well and truly to be made, the United States Fidelity and Guaranty Company, a corporation, binds itself, its successors and assigns, firmly by these presents.

The condition of the above obligation is such that, whereas Master Lubricants Company, a corporation, a creditor, the petitioner in said matter, is about to take an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from a certain order and judgment made and filed on the 5th day of April, 1946, denying the petition of said petitioner for a review of and affirming that certain order made and entered by Hugh L. Dickson, Esq., Referee in Bankruptcy, on December 31st, 1945, overruling exceptions and objections of said creditor to the Trustee's Report of Exempted Property, allowing as exempt to said Bankrupts certain real property, on which Bankrupts claimed a homestead, approving said Report, and adjudging that said homestead did not become aban-

done by reason of a divorce between said Bankrupts, and which said order and judgment was made by the United States District Court, Southern District of California, Central Division, in the above entitled matter:

Now Therefore, If the appellant shall prosecute said appeal to effect [78] and answer all costs which may be adjudged against it if the appeal is dismissed or the judgment affirmed, or such costs as the appellate court may award if the order and judgment is modified, then this obligation shall be void; otherwise, to remain in full force and effect.

It Is Hereby Agreed by the surety that in the case of default or contumacy on the part of the principal or surety, the Court may, upon notice of not less than ten days, proceed summarily and render judgment against them, or either of them, in accordance with their obligation and award execution thereon.

Signed and Sealed, and dated this 3rd day of May, 1946.

Master Lubricants Company, a corporation,

By Wm. L. Hagenbaugh, President

Principal

UNITED STATES FIDELITY AND
GUARANTY COMPANY

By O. D. Brick,

Attorney-in-Fact.

(Seal)

Examined and recommended for approval as provided in Rule 13.

James P. Clark

Attorney.

The Premium on this Bond is \$10.00 for 1 year.

I hereby approve the foregoing.

Dated this day of, 1946.

.....,
Judge.

State of California, County of Los Angeles—ss:

On this 3rd day of May in the year one thousand nine hundred and forty-six, before me, Elizabeth A. Sheridan, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared O. D. Brick, known to me to be the duly authorized Attorney-in-fact of the United States Fidelity and Guaranty Company, and the same person whose name is subscribed to the within instrument as the Attorney-in-fact of said Company and the said O. D. Brick duly acknowledged to me that he subscribed the name of the United States Fidelity and Guaranty Company thereto as Surety and his own name as Attorney-in-fact.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Elizabeth A. Sheridan (Seal)

Notary Public in and for Los Angeles County,
State of California.

My Commission Expires Nov. 5, 1948.

[Endorsed]: Filed May 3, 1946. [79]

[Title of District Court and Cause.]

In Bankruptcy No. 43,317-Y and No. 43,318-Y.

DESIGNATION BY APPELLANT OF POINTS ON WHICH IT INTENDS TO RELY ON APPEAL.

Master Lubricants Company, a corporation, Appellant, under the appropriate rule governing procedure on appeal, makes this statement and designation of the points on which Appellant intends to rely on this appeal from the judgment and order of the above entitled United States District Court, made and filed herein April 5, 1946, as follows, to wit:

(1) The Bankrupts, George O. Cook and Minnie M. Cook were formerly husband and wife, and as such acquired in point tenancy certain real property in the City of Los Angeles, County of Los Angeles, State of California, particularly described as, the East 40 feet of the South 135 feet of Lot 7 of Sunnyside Heights, as per map recorded in Book 8, Page 88 of Maps in the office of the County Recorder of Los Angeles County, State of California. Deed for which was recorded June 24, 1939. Declaration of homestead, executed by both of bankrupts, then husband and wife, was recorded in the office of the Recorder of Los Angeles County, on June 22, 1940, covering above property.

(2) That on September 17, 1941, in the Superior Court of the State [80] of California, in and for the County of Los Angeles, judgment was entered in favor of Master Lubricants Company, a corporation, the Appellant and *against* George O. Cook and Minnie M. Cook, his wife, the Bankrupts, for \$3431.19 and \$12.25 costs;

that partial satisfaction of said judgment was made in 1942, and on date of filing of Petitions in bankruptcy by said Bankrupts, June 13, 1944, there was unpaid on said judgment a balance of \$2777.16, for which claim was filed in said bankruptcy and allowed by the Referee.

(3) That on November 15, 1941 the said George O. Cook left the homestead and abandoned and deserted his wife, Minnie M. Cook, who continued to live at the homestead, with her daughter, Lila Lorine Cook, until March, 1943. On May 29, 1942, the wife filed an action for divorce against her said husband, in the Superior Court of Los Angeles County, California and for alimony; the defendant was duly served, but did not answer or make any appearance, and his default was entered. The complaint in that action did not describe or claim that the parties owned any real property and did not mention the homestead.

(4) That on June 30th, 1942, an Interlocutory Decree of divorce was granted the plaintiff, with custody of her three children and ordering defendant, the husband, to pay \$16.00 a week for the care and maintenance of plaintiff and her minor children. That no mention is made of the real property or homestead of the parties. No appeal was taken from this decree and it became final as to the right to a divorce and all property matters affected by it, after the expiration of the time allowed by law for such appeal.

(5) On July 1, 1943 a final decree of divorce was made and entered in said action and the final decree did not set forth or refer to any real property belonging to the parties and made no mention of or disposition of the homestead.

(6) That upon the entry of the final decree of divorce both husband and wife were restored to their former status as single [81] persons, and as the homestead was not mentioned in and was not disposed of in any way in the divorce action, it must be deemed to have *have* been abandoned and terminated.

(7) A written agreement was made between the parties at or about the time the divorce action was brought, meant to be a property settlement and this did not mention any real property as owned by the husband and wife, nor did it mention the homestead, but only related to personal property and attorney's fees in the action.

(8) When the wife moved away from the homestead in March, 1943, the husband, George O. Cook, moved back to the homestead and has continued to reside thereat; shortly after the entry of final decree in the divorce action, he re-married and took his second wife to live on the homestead property; but the homestead as such had become abandoned prior to that time.

(9) On June 13, 1944, the bankrupts filed separate petitions in bankruptcy, with identical Schedules of property, except that Minnie M. Cook listed an automobile worth \$70.00. They each listed the property covered by the homestead and claimed that it was exempt as a homestead to each of them. These bankruptcy matters were referred to Hugh L. Dickson, Esq., Referee in Bankruptcy. A Trustee was appointed at the first meeting of the creditors by the Referee, and such Trustee filed his Report exempting all property listed, both real and

personal, and the real property as exempt as a homestead to the bankrupts. In due time Appellant served and filed as a creditor, written exceptions and objections to the Trustee's Report. These matters were heard by the Referee on September 28, 1944 and October 5th following, and it developed at the hearings that the minor daughter of the parties, Lila Lorine Cook, lived with her father on the homestead premises from March, 1943 until about a week prior to September 28, 1944, when she left the homestead property or what had been the homestead, and went to live with her mother at another place in Los Angeles, and that she has ever since lived with her mother. [82]

(10) Children, whether minor or not, have no rights in the property covered by a homestead, at time of divorce, unless conferred by statute, and there is no such statute law in California; it is only in the event of the death of a parent, that a child under the probate law is given recognition and rights in the homestead.

(11) The residing for a time by the minor daughter with her father on the property claimed by him as a homestead, after divorce, does not revive or continue the life of the homestead in the father. Nor can he draw any recognition of the homestead from the fact that he in part supported her while she lived with him, as this was a duty that the law imposed upon him.

(12) The order made and entered December 31, 1945, overruling Appellant's exceptions and objections to Trus-

tee Report, approving the Report of exemptions and adjudging that the homestead was not abandoned and terminated by the divorce between the bankrupts was erroneous and against the law, and contrary to the findings.

(13) That the order and judgment of the United States District Court, denying Appellant's Petition for a review of the Referee's order above mentioned and affirming such order of Referee was error and against law and contrary to the findings of fact of the Referee.

(14) That the evidence at the hearing before the Referee established the date of birth of the minor daughter, Lila Lorine, as of October 8, 1925 and on the coming October 8, 1946, she will be of age. That this minor left the homestead premises prior to September 28, 1944 and has not since resided thereat. That at the time of the filing of the bankruptcy petitions herein, George O. Cook and Minnie M. Cook, owned the real property formerly covered by said homestead as joint tenants and not otherwise; that this real property was then and is now an asset of said bankrupts subject to the payment of their debts, and should be so applied.

JAMES P. CLARK

Attorney for Appellant.

Dated May 9, 1946. [83]

[Affidavit of Service by Mail.]

[Endorsed]: Filed May 9, 1946. at 3 P. M. [84]

[Title of District Court and Cause.]

In Bankruptcy No. 43,317-Y and No. 43,318-Y.

DESIGNATION BY APPELLANT OF PAPERS
AND MATTERS TO BE INCLUDED IN THE
RECORD ON APPEAL.

Master Lubricants Company, a corporation, Appellant, under the appropriate Rule governing procedure on appeal, hereby designates the portion of the records, proceedings and evidence to be contained in the record of its appeal herein, and which are necessary for the consideration thereof, to wit:

(1) Petitions of Bankrupts, filed June 13, 1944 and including Schedules A and B thereof.

(2) Approval of Bankrupts petitions.

(3) Trustee's Report of Exempt Property of George O. Cook and Minnie M. Cook, Bankrupts.

(4) Exceptions and objections of Master Lubricants Company, a corporation, a creditor, and Appellant herein to said Trustee's Reports of exemptions of Bankrupts.

(5) Findings of Fact and Conclusion of Law of Referee, dated December 31, 1945, after hearings on objections and exception of said creditor to Trustee's Report on Exemptions.

(6) Order of Referee, dated December 31, 1945, overruling exceptions and objections to Trustee's Report of Exemptions. [85]

(7) Application and order extending time of Master Lubricants Company, a corporation, a creditor, and Appellant herein, to file petition for review of order of Referee.

(8) Petition of Appellant for review of Referee's order of December 31, 1945, overruling exceptions and objections to Trustee's Report of Exemptions, by Judge of United States District Court.

(9) Certificate of Referee on Review, dated February 7, 1946.

(10) Order of United States District Court, dated April 5, 1946, denying petition for review and affirming Referee's order of December 31, 1945.

(11) Notice of Appeal, dated May 3, 1946.

(12) Bond for costs on appeal.

(13) Reporter's Transcript of evidence taken on hearings on September 28 and October 5, 1944, before Referee, on exceptions and objections of Appellant to Trustee's Report of Exemptions of Bankrupts.

(14) Exhibit 1 offered and received in evidence on behalf of Appellant at said hearing before Referee, being photostatic copies of complaint, default, interlocutory decree, final decree and property settlement, in the divorce case of Minnie M. Cook against George O. Cook, the Bankrupts herein.

(15) Appellant's designation of points on appeal.

(16) This Designation.

JAMES P. CLARK,
Attorney for Appellant.

Dated May 9, 1946.

[86]

[Affidavit of Service by Mail.]

[Endorsed]: Filed May 9, 1946, at 3 P. M. [87]

[Title of District Court and Cause.]

No. 43317-Y-Bkey. No. 43318-Y-Bkey.

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 87 inclusive contain full, true and correct copies of Petition and Schedules in each of Cases Nos. 43317-Y and 43318-Y; Orders of Adjudication and of General Reference in each of cases Nos. 43317-Y and 43318-Y; Trustee's Report of Exempted Property in each of cases Nos. 43317-Y and 43318-Y; Exceptions and Objections by Creditor to Trustee's Report of Exempted Property in each of cases Nos. 43317Y and 43318-Y; Findings of Fact and Conclusions of Law Upon Objections of Creditor to the Trustee's Report of Exempted Property; Order Overruling Objections and Exceptions of Creditor to Report of Trustee Allowing Exemptions of Bankrupts and Approving and Affirming Report; Petition for Review of Referee's Order by Judge; Creditor's Exhibit No. 1; Referee's Certificate on Review; Order Affirming Order of Referee; Notice of Appeal; Undertaking for Costs on Appeal; Designation of Points on which Appellant Intends to Rely on Appeal and Designation by Appellant of Papers and Matters to be Included in the Record on Appeal which, together with copy of reporter's transcript of Hearings on September 28 and October 5, 1944, transmitted herewith, constitute the record on ap-

peal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to \$16.60 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 10 [88] day of June, A. D. 1946.

(Seal)

EDMUND L. SMITH,
Clerk

By Theodore Hocke
Chief Deputy Clerk

In the District Court of the United States
Southern District of California
Central Division

Nos. 43,317-Y, 43,318-Y

In the Matter of

GEORGE O. COOK and MINNIE M. COOK,
Bankrupts.

HEARING ON OBJECTIONS TO DISCHARGE OF
BANKRUPTS AND EXCEPTIONS AND OB-
JECTIONS OF CREDITOR TO TRUSTEE'S
REPORT OF EXEMPTED PROPERTY

The following is a stenographic transcript of the proceedings in the above entitled cause, which came on for hearing before the Honorable Hugh L. Dickson, United States Referee in Bankruptcy, at his courtroom, 343 Federal Building, Los Angeles, California, at the hour of ten o'clock a. m., on September 28, 1944.

Appearances:

James P. Clark, Esq., appearing on behalf of the creditor, Master Lubricants Co.

J. Everett, Brown, Esq., appearing on behalf of the Bankrupts.

I. F. Parker, Esq., Trustee. [1*]

The Referee: Now, we come to the Cook cases, Objections to Discharge, and Objections to Trustee's report of exempted property. Maybe we had better take that up first.

Mr. Clark: Mr. Brown, we have several matters here. Will you stipulate they may be heard at the same time?

Mr. Brown: Why, certainly. I want to get through with them.

Mr. Clark: The George O. Cook and the Minnie M. Cook cases?

Mr. Brown: Yes, I will stipulate.

Mr. Clark: And that the objections to the Trustee's report of exemptions in both cases might be heard at the same time?

Mr. Brown: Why, certainly.

The Referee: They are all on the calendar for this time. Will your evidence be different in each case?

Mr. Clark: No. And that the objections to discharge of the Bankrupts might be considered at the same time?

Mr. Brown: Yes.

Mr. Clark: And that the evidence introduced in one case might be considered so far as applicable in the other case?

Mr. Brown: Certainly.

Mr. Clark: That is all. I would like to call Mrs. Cook first. [2]

MINNIE M. COOK,

one of the Bankrupts herein, called as a witness, was sworn and testified as follows:

Direct Examination.

By Mr. Clark:

Q. You are Minnie M. Cook? A. Yes, sir.

The Referee: As I remember it, you and Mr. Cook are not living together?

The Witness: No, we are divorced and he has remarried.

Mr. Clark: Q. Mrs. Cook, there has been a divorce between yourself and George O. Cook? A. Yes.

Q. When did he leave you?

Mr. Brown: Objected to as immaterial.

The Referee: I don't see what the materiality is. What difference does it make what time she left him or he left her?

Mr. Clark: I am going to come to the question of homestead, if your Honor please.

The Referee: Objection overruled. Let's get at the facts. I think it will be stipulated there is not a very kindly feeling between the parties at this time.

Mr. Clark: I don't know, your Honor. There may be a very friendly feeling between them.

Mr. Brown: I don't want to make that stipulation.
[3] Let it come out.

The Referee: Divorces are so common nowadays. Maybe it is on a friendly basis.

Mr. Clark: That is particularly applicable to Hollywood, your Honor.

(Further discussion omitted.)

(Testimony of Minnie M. Cook)

Q. When did your husband leave you prior to the divorce?

A. I don't remember that time any more. In fact, I have forgotten about the whole matter.

Mr. Clark: I think as long as this is going to be largely a law question I will introduce this in evidence. I have here a transcript of the proceedings of the divorce action. I will state the purpose of introducing it to Your Honor so that it will be clear. Neither the complaint nor the interlocutory decree or the final decree or the property settlement agreement in writing mentioned the homestead and the real estate covered by it.

Mr. Brown: I will stipulate to that.

Mr. Clark: I would like to have this in the record so in case of appeal we will have it.

The Referee: All right, sir. Hand it to the reporter and he will mark it.

(The document was marked Objecting Creditor's Exhibit 1.)

Mr. Clark: Q. Where were you living at the time your [4] husband left you and which this record shows to be on November 15, 1941?

A. I was living out there on 105th Street.

Q. On what street? A. On 105th Street.

Q. On the property covered by the homestead?

A. Yes.

Mr. Clark: Mr. Brown, will you stipulate this homestead property was acquired by joint tenancy deed dated February 16, 1932, by George O. Cook and Minnie M. Cook, his wife?

(Testimony of Minnie M. Cook)

Mr. Brown: I will stipulate the deed itself is the best evidence.

Mr. Clark: Very well, then. We will offer this deed in evidence.

The Referee: It will be received. It has been recorded, I assume?

Mr. Clark: It has been recorded.

(The document was marked Objecting Creditor's Exhibit 2.)

Q. On June 20, 1940, there was a declaration of homestead filed.

Mr. Brown: The declaration of homestead is the best evidence, your Honor. I handed it to counsel and I would like to have him introduce it.

Mr. Clark: All right. If your Honor please, I offer [5] this in evidence.

The Referee: Objecting Creditor's Exhibit 3.

(The document was marked Objecting Creditor's Exhibit 3.)

Mr. Brown: Here is another deed on the same property.

Mr. Clark: I think the other one will be sufficient.

The Referee: The first deed here, Objecting Creditor's Exhibit No. 2, is dated February 6, 1939, from Nathan Buchwald and wife to George O. and Minnie M. Cook. All right, sir.

Mr. Brown: In order to keep the record straight, there have been two joint deeds executed on that property by the grantors. That is why I offered the second

(Testimony of Minnie M. Cook)

deed so there wouldn't be any argument as to which deed took conveyance.

The Referee: What was the purpose of the second deed, Mr. Brown?

Mr. Brown: To correct the legal description.

Mr. Clark: Then we will offer it in evidence.

The Referee: Creditor's Exhibit 4.

(The document was marked Objecting Creditor's Exhibit 4.)

Mr. Clark: Q. When did you move from this property at 1513 West 105th Street?

A. I believe it was a year ago in March.

Q. What year? A. A year ago in March. [6]

The Referee: That would be 1943?

The Witness: Yes.

Mr. Clark: Q. Didn't you move from that property in 1942? A. A year ago last March.

Mr. Clark: If your Honor will let me have that exhibit.

The Referee: Here are all of them.

Mr. Clark: Q. Oh, it was March, 1943.

A. It was a year ago last March.

Q. Where did you move to?

A. 5515½ South Broadway.

Q. You have been living there ever since?

A. I have.

Q. In apartment No. 2? A. That is right.

Q. Who is living with you?

Mr. Brown: That is objected to, who is living with her.

(Testimony of Minnie M. Cook)

Mr. Clark: I will show the materiality of it a little later.

The Referee: All right, sir. Objection overruled. Does the answer tend to degrade this witness?

Mr. Clark: Q. Does your daughter live with you?

A. She moved in about a week ago with me.

The Referee: Who moved in with you?

The Witness: My daughter.

The Referee: All right. [7]

Mr. Clark: Q. You left this property in March, 1943, you say, the property at 1513 West 105th Street?

A. Yes, that is right.

Q. That is the first time you moved to 5515½ South Broadway? A. That is right.

Q. Is your daughter married?

A. No, she isn't.

Q. Did your daughter move with you to 5515½ South Broadway? A. About a week ago, yes.

Q. I didn't catch your answer.

A. About a week ago.

Q. Did she move there with you when you first went there in March, 1943?

A. No, she didn't. I moved there alone.

Q. When you moved away from 1513 West 105th Street, the homestead, who lived there after you left?

Mr. Brown: Objected to as being heresay.

The Referee: She may have visited there.

Mr. Clark: She may have.

The Referee: She may know, Mr. Brown. I don't know. Let's find out.

The Witness: Well, Mr. Cook.

(Testimony of Minnie M. Cook)

The Referee: Do you know of your own knowledge who lived there? [8]

The Witness: Yes, I do.

The Referee: All right, let's have it.

The Witness: Mr. Cook and my daughter, Lila; they lived there together. When I moved out Mr. Cook moved in.

The Referee: Is this your daughter and Mr. Cook's daughter?

The Witness: Yes, it is.

Mr. Clark: Q. When you say Mrs. Cook, you mean the second Mrs. Cook? A. No, Lila, my daughter.

Q. Oh, that is the Miss Cook, isn't it?

A. Yes, that is Lila.

Q. She stayed there at the house?

A. Yes, she stayed with Mr. Cook.

Q. There was nobody else there but Mr. Cook and the daughter? A. That is right.

Q. But your daughter is living with you now?

A. She moved in with me a week ago.

Q. How is that?

A. She moved in with me a week ago.

Q. And she is living with you now?

A. Yes she is.

Q. And the people living at the old homestead are George O. Cook and his second wife

A. That is right. [9]

The Referee: As I understand you, madam, when you left this homestead property Mr. Cook and his daughter continued to reside there?

The Witness: That is right.

(Testimony of Minnie M. Cook)

The Referee: And they have resided there ever since, so far as you know?

The Witness: Yes.

The Referee: And they reside there now?

The Witness: Except my daughter. She moved in with me a week ago.

The Referee: Except your daughter moved in with you a week ago?

The Witness: Yes.

The Referee: All right.

Mr. Clark: Q. When your husband left you on November 15, 1941, where did he go?

Mr. Brown: Objected to as immaterial.

Mr. Clark: I don't think it would be, your Honor.

The Referee: I don't know, Mr. Brown. I have no pleadings pro and con. I don't know what is in the mind of either party. My practice is to hear all of the facts and disregard the immaterial. I try to find out what the true answer should be. If I had a complaint and answer here, with allegations pro and con, I would know something about it.

Mr. Brown: If the Court please, the Civil Code section [10] lays down as to how a homestead can be abandoned.

The Referee: I understand that perfectly well. There are only two ways.

Mr. Brown: Two ways, and all these questions he is asking are immaterial.

The Referee: I don't know. The courts have held a man may move away to Nevada and rent the property and still retain a homestead. We will hear all of the facts. Do you know where Mr. Cook went?

(Testimony of Minnie M. Cook)

The Witness: No, I don't.

The Referee: All right. We had that great long squabble over nothing.

Mr. Clark: Q. He left that homestead about that time, did he? A. Yes, he did.

Q. You were there residing with your daughter?

A. That is right.

Q. You said you continued to reside there up until March, 1943?

A. That is right. It was 1942. It was a year ago last March.

The Referee: This is 1944.

Mr. Clark: Yes.

Q. Do you mean to say you left there in March, 1942?

A. Well, a year ago last March, 1943.

The Referee: That would be March, 1943. [11]

Mr. Clark: Do you remember when you filed your divorce action? Was that before or after you left this homestead?

A. No. I was still there after the divorce. I was still living there after the divorce.

Q. You got the final decree July 1, 1943, is that correct? A. June 30.

Q. 1943? A. That is right.

Q. Now, between the time that George O. Cook left that place in November, 1941, and the time you got your final decree of divorce in 1943, was he at the homestead or away from it? A. He was away from it.

Q. Away from it? A. That is right.

Q. Then after the final decree your husband remarried?

A. That is right.

(Testimony of Minnie M. Cook)

Q. To Mrs. Evelyn somebody?

A. Evelyn Detweiler.

Q. Do you know when they were married?

A. No, I don't. I wasn't there.

Q. Now, let's get it clear, that you and your daughter lived in this homestead, you say, until March, 1943?

A. That is right. [12]

Q. But your final decree was on July 1, 1943?

A. That is right.

Q. Then you had left this homestead before the final decree?

A. Yes, I had. You see, the final decree wasn't until June 30 and I left in March.

Q. You went over to 5515½ South Broadway?

A. That is right.

Q. The divorce had been granted, but of course the final decree had not been entered?

A. That is right.

Q. Then I asked you when George returned to this 1513 West 105th Street.

A. He moved back in on the day I moved out.

Q. That was in March, 1943, you say?

A. I don't remember the exact day. I know it was in March.

Q. Are you sure that wasn't in 1942?

A. I don't remember. It was a year ago March.

Q. Mrs. Cook, did you rent this place at any time?

A. No.

Q. To any person? A. No, I didn't.

Q. When George moved back into the homestead property did you have an arrangement with him to pay you so much a month? [13]

(Testimony of Minnie M. Cook)

Mr. Brown: Objected to as immaterial.

The Referee: Do you mean as alimony or rent?

Mr. *Cook*: As rent, your Honor.

The Witness: No, I did not.

Mr. Clark: Q. Did he pay you so much a month?

A. No.

Q. He did not pay you \$30 a month?

A. No, he didn't.

Q. Not at any time? A. No, he didn't.

Q. You heard his testimony at the first meeting up here in which he said he was paying \$30 a month. What was that paid on?

A. He was paying rent or paying monthly payments on the property.

Q. Were you employed at that time when you moved away from there in March, 1943?

A. I was part time.

Q. Was your daughter employed?

A. No, she wasn't. She was still going to school.

Q. Is she employed now?

A. No, she is not. She works over at the Canteen nights, but she does not get paid for that.

Q. The only person who lives at this homestead is George O. Cook and his second wife?

A. That is right. [14]

Q. Did you keep a bank account in 1943?

A. I never did have a bank account.

Q. And you have not got one now?

A. No, I haven't.

Q. Have you any expectancies of inheritance?

A. No, I haven't.

(Testimony of Minnie M. Cook)

Q. Have you a mother who is a well to do woman?

A. I don't think she is very well to do.

Q. What is your mother's name?

A. Mayme E. Miller.

Q. She lives out in Venice? A. That is right.

Q. You are the only child?

A. That is right. She also has three grandchildren.

Q. Three grandchildren? A. Yes.

Mr. Clark: Well, that is a matter of law as to who an heir is.

The Referee: This old lady may make a will and cut them all out.

Mr. Clark: Q. Has she made a will?

A. As far as I know, she has.

The Referee: She is under no obligation. The courts have said they will not disturb a will unless there has been undue influence or fraud or something of that kind.

Mr. Clark: That is right. [15]

The Referee: However, if she should inherit anything within six months of the adjudication it will be an asset of her estate. All right, sir. What is the next question?

Mr. Clark: Q. Now, you were in partnership with your husband in this oil business in 1942, were you not?

A. I never was a partner to his business at any time.

Q. Weren't you a partner in the Coach Oil Company?

A. No, I never was a partner in the Coach Oil Company or never was a business partner of his at any time.

Q. Did you keep the books of that company?

A. Sure, I used to make entries in the books, but that doesn't mean I was a partner.

Q. You kept the books?

A. Yes, I was the bookkeeper.

(Testimony of Minnie M. Cook)

Q. A full set of books? You were here in this courtroom in 1941 on this bankruptcy proceeding of the Coach Oil Company? A. Yes, I was.

Q. Did you see the petition that was verified in that case?

A. No, I didn't pay any attention to it at that time.

Q. You knew that your husband had been operating it as the Coach Oil Company or the Koch Oil Company?

A. That is right.

Q. And you kept the books?

A. I made the daily entries. That is all I did. What [16] amount of money he took in or what he spent it for or all that. I don't know.

Q. Did you keep a full set of books?

A. Just on daily entries.

Q. And you went to the place of business to keep those books?

A. No, I didn't. I kept them at home.

Q. You kept them at home? A. Yes.

Q. You have been down to that number, haven't you? Do you know where it is, 9659 South Alameda Street?

A. I was there once or twice.

Q. Do you recall the sign that was up on the building?

A. No, I don't believe I ever looked at that sign.

Q. Wasn't there a big sign up there the Coach Oil Company?

A. I don't recall that there was. I don't know.

The Referee: Did these parties in 1941 file individual schedules as well as partnership schedules?

Mr. Clark: There is just one thing that I would like to call your attention to.

(Testimony of Minnie M. Cook)

Mr. Brown: I can answer that, if your Honor please. They filed as partners the Coach Oil Company. The attorney did not pay the fees and the case was dismissed.

Mr. Clark: Q. This case is No. 36,744-C, and I call your [17] attention to Schedule B-1, real estate, and ask you to look at the description of the real estate. That is the real property covered by the homestead, isn't it?

A. Yes, it is. I never looked it up in the records, but I suppose it is. I don't know.

Mr. Clark: I want to offer in evidence this schedule B-1, real estate, showing that this same real estate that they claim a homestead on was in this bankruptcy proceeding.

Mr. Brown: I will stipulate it was.

The Referee: Does it show there it was homesteaded?

Mr. Clark: Yes, it does, Your Honor. Therefore, it was individual.

Q. The partnership did not have any homestead on that property, did they?

Mr. Brown: Objected to as asking this witness for a conclusion.

The Referee: That is a legal question.

Mr. Clark: Q. You and your husband, George O. Cook, are the ones who owned that real property at that time? A. Yes, we were.

(Testimony of Minnie M. Cook)

Q. And the Coach Oil Company did not own it?

A. No.

Mr. Clark: I think that establishes it was individual, Your Honor.

The Referee: All right, sir. There is no attorney's name to this Coach Oil Company schedule. Who was your attorney, [18] Mr. Cook?

Mr. Cook: Paul H. Bruns.

The Referee: A tall, redheaded fellow who got in trouble later on?

Mr. Cook: Yes. I tried to locate him, but I can't find him.

The Referee: I remember him.

Mr. Parker: I think perhaps Your Honor's attention should be called to the fact that that former case was dismissed and adjudication vacated.

The Referee: It was?

Mr. Parker: The proceeding was dismissed and adjudication vacated. I just checked that a few minutes ago.

The Referee: That wipes it out, doesn't it?

Mr. Brown: My contention is, it is a dead issue.

The Referee: If the adjudication is vacated then it is out.

(Testimony of Minnie M. Cook)

Mr. Clark: Q. In relation to that case, Mrs. Cook, I want to call your attention to this question:

Section A under Subdivision 7 of your Statement of Affairs, "What proceedings under the Bankruptcy Act have been brought by or against you during the six years immediately preceding the filing of the original petition herein? (Answer) None."

A. Is that the second time, you mean, or the first one? [19]

Q. This is your present petition.

A. What do you want me to answer on that?

Q. Here it is. Is that correct?

A. Well, according to that, it says none, but there was that bankruptcy, yes.

Q. Then that statement is not correct?

A. (No answer by the witness.)

Mr. Clark: That, Your Honor, is the answer in regard to whether or not there had been a bankruptcy.

The Referee: I have the file. It says this adjudication was set aside July, 1941. Anything further?

Mr. Clark: That is all.

The Referee: Any questions, Mr. Brown?

Mr. Brown: No questions at all.

The Referee: That is all, madam. Call your next witness.

Mr. Clark: I will call Mr. Wolford. [20]

LILA LORINE COOK,

called as a witness, was sworn and testified as follows:

Direct Examination.

By Mr. Clark:

Q. You are the daughter of Minnie M. Cook?

A. That is right.

Q. And George O. Cook?

A. That is right.

Q. In 1941 in November where were you living?

A. Home.

Q. That is at 1513 West 105th Street?

A. That is right.

Q. Do you recall that on or about that time your father, George O. Cook, left that place?

A. I don't know just when it was.

Q. You don't remember?

A. I don't know just when it was.

Q. Where do you live now?

A. At the present time I am living with my mother at 5515½ South Broadway.

Q. You live with your mother at 5515½ South Broadway?
A. Yes, sir, temporarily.

The Referee: Is there any question as to the truth of the facts as related by Mrs. Cook that her husband left home? [52]

Mr. Clark: That is not the question.

The Referee: Counsel is trying to bolster it up by additional proof. Is there any question about it?

Mr. Brown: I will stipulate Mr. Cook left the domicile for a short time and then went back in it. He really never gave up possession.

Mr. Clark: I won't stipulate to anything like that.

(Testimony of Lila Lorine Cook)

The Referee: Is there any controversy over the veracity of Mrs. Cook's statement as to the time he left and the time he came back? If there is, I want further proof.

Mr. Brown: Yes, there is, Your Honor, because Mr. Cook was in and out of the home. Her testimony goes along a certain way.

The Referee: I thought if we had the fact established there was no use in gilding the lily. All right. What is your next question?

Mr. Clark: Q. You are not married now?

A. No, sir.

Q. Are you working now?

A. Only at the Hollywood Guild Canteen.

Q. How long have you been working?

A. There?

Q. Yes. A. About two and a half months.

Q. Did you work some other place than that?

A. Yes, sir. [53]

Q. Do you recall the time that your mother left this homestead, before her divorce or after it?

A. You mean before it was final?

Q. Was it before or after the trial?

A. I don't remember.

Q. Do you know whether it was before or after the final divorce? A. It was before.

Q. After your mother left there did any other person live there? A. Yes, my father and I.

Mr. Clark: That is all.

The Referee: Any questions, Mr. Brown?

(Testimony of Lila Lorine Cook)

Mr. Brown: When you worked at the Hollywood Canteen you did not receive a salary?

The Witness: No, sir.

Mr. Brown: That is all.

Mr. Clark: Q. Well, you worked as an usherette at a theatre, too, didn't you?

A. Yes, sir, before I went to the Canteen.

Q. How long was that?

A. About three months.

Q. Three months as an usherette. You got paid for that, didn't you? A. Yes.

Mr. Clark: That is all. [54]

The Referee: Call your next witness.

Mr. Clark: I think that is all we have to offer, Your Honor.

Mr. Brown: Now, we have no evidence.

The Referee: Is the matter submitted?

Mr. Brown: Matter submitted.

The Referee: All right. I don't see any merit to the objections to discharge, so the objections to discharge will be overruled and the discharge will be granted. I see no merit in the objection to the Trustee's report of exempt property because there are only two ways in which a homestead may be abandoned: one is by declaration of abandonment, and the other is by grant, neither of which occurred here.

Mr. Clark: Well, if Your Honor please, that is the point I want to argue.

The Referee: If you want to submit authorities I will hear you. I know the testimony.

Mr. Clark: That is all I want to argue.

The Referee: I will take the written citations on the abandonment. That is what you are interested in.

Mr. Clark: That is the point I had in mind.

The Referee: Give me authorities and I will look them up.

(Further discussion and citation of authorities omitted.)

[55]

Before Referee in Bankruptcy, Hugh L. Dickson. Nos. 43,317-Y, 43,318-Y.

In the Matter of George O. Cook and Minnie M. Cook, Bankrupts.

REHEARING ON EXCEPTIONS AND OBJECTIONS TO TRUSTEE'S REPORT OF EXEMPTED PROPERTY.

Court reconvened in the above entitled cause at the hour of ten o'clock a. m., on October 5, 1944.

Appearances:

(Same counsel as before.) [56]

The Referee: In reading that case, Mr. Clark, you cited me the wrong one. The Court says there, "In the absence of minor children the homestead is resolved by divorce." Do you remember that language?

Mr. Clark: Yes, I do, Your Honor, and I have the case here. The case does not decide that, Your Honor. It merely says—

The Referee: That is the way I read it, in the absence of minor children.

Mr. Clark: It says, "Authority can be found," that is all the Court said, "To the effect that where the rights of children are concerned the homestead is not affected by the divorce where the decree is silent upon the question." And it cites certain cases. I have examined those cases critically.

The Referee: There were no children involved in this Lang case.

Mr. Clark: There was one, but he was an adult. It refers also to the second Bishop on Marriage. I have that here, also. That is not on homestead. That Bishop quotation is primarily to the obligation of the father to support the children and the results if the decree of divorce provides otherwise, and so forth. I would like to discuss that phase with Your Honor.

The Referee: Let me find out from this young lady whether she was a minor or not. Will you come forward, Miss. [57]

LILA LORINE COOK,

called as a witness on behalf of the Court, having been first duly sworn, testified as follows:

The Referee: Q. Now, tell us how old you were when your father and mother were divorced, that is to say, when your mother left this homestead property? How old were you?

A. I just turned seventeen at the time.

Q. I don't hear you.

A. Seventeen, I think.

Q. How old are you now? A. Eighteen.

Q. As I remember, your mother said she left some time in 1943. Is that right, gentlemen?

(Testimony of Lila Lorine Cook)

Mrs. Cook: Yes, it is.

Mr. Clark: The husband left in November, 1941.

The Referee: The husband left some time in November, 1941 and the wife remained at the homestead property with this young lady.

Mrs. Cook: That is right.

The Referee: Until her husband came back in 1943. Is that the situation?

Mrs. Cook: That is right.

The Referee: Q. You remained there all the time?

A. Yes, sir.

The Referee: Any other questions? [58]

Mr. Parker: May I interpose something? Her name was not stated for the record.

The Referee: Q. What is your name?

A. Lila.

Q. Lila what? A. Lila Lorine.

Q. You are the daughter of George O. Cook?

A. Yes, sir.

Q. And Minnie M. Cook? A. Yes, sir.

The Referee: All right. Anything further?

Examination.

By Mr. Clark:

Q. Your testimony was you were living with your mother now?

A. I am just staying with her for a while.

Q. At 5515½ South Broadway, is that right?

A. Yes.

The Referee: Wouldn't the situation stem back to the date of bankruptcy and not where the child is living now?

Mr. Clark: Q. Do you know the date of your birth? Do you have your birth certificate? A. Of course.

(Testimony of Lila Lorine Cook)

Q. When were you born? A. October 8, 1925.
[59]

Q. 1925? A. Yes, sir.

Q. Did you say November? A. October.

The Referee: All I wanted to establish, I had overlooked whether or not she was a minor.

Mr. Brown: I would like to ask one question.

The Referee: Yes, sir.

Cross-Examination.

By Mr. Brown:

Q. You are a single woman? A. Yes, sir.

Q. You have been a single woman? A. Yes.

Q. You have never been married? A. No.

The Referee: As I understand from your testimony you resided with your father, George O. Cook, on this homestead property until I believe you said two or three weeks ago when you went to live with your mother?

The Witness: Two weeks ago.

The Referee: All right.

Mr. Brown: May I ask another question?

The Referee: All right, sir.

Mr. Brown: Q. Do you still consider—this is asking [60] for a conclusion—the home of your father is your home?

Mr. Clark: Wait a minute. I think that calls for a conclusion.

The Referee: Oh, yes, I think so.

Mr. Brown: Q. Is your personal clothing at the home of your father? A. At my home.

Q. At the home? A. Yes.

Q. The residence? A. Yes.

(Testimony of Lila Lorine Cook)

Q. Your personal clothing? A. Yes.

The Referee: What residence now, the mother or father?

The Witness: My father.

The Referee: You have left your personal effects at your father's home?

The Witness: Yes.

The Referee: You are now with your mother and have been for the past two or three weeks?

The Witness: Yes, sir.

The Referee: All right. Any other questions?

Redirect Examination.

By Mr. Clark:

Q. As to this homestead, do you know what street [61] address that is? A. 1513 West 105th Street.

Q. After your father left there in November you lived there with your mother how long?

A. About a year, I guess.

Q. Until 1942? A. I don't remember the date.

Q. Do you know when your father left the family in 1941? A. I don't know the date.

Q. Do you know that it was in 1941?

A. I don't remember that.

Q. Do you know where your mother lived in 1942?

A. At the house at 1513.

Q. Your mother lived at the homestead?

A. Yes, sir.

Q. With you? A. With me.

Q. She continued to live there how long with you?

A. Until my father moved in,

(Testimony of Lila Lorine Cook)

Q. Well, now, give us the date.

A. Well, my father has been living there now about a year and a half.

Q. Where did your mother go when she left the home-
stead? A. To 5515½. [62]

Q. Did you move over there with her?

A. No, sir.

Q. Your father and his second wife moved in when?

A. A year ago—oh, no, it wasn't a year ago—about seven or eight months ago.

Q. You lived there for a time with your father and his second wife? A. Yes, sir.

Q. Your stepmother? A. Yes, sir.

Q. But now you are living at 5515½ South Broadway?

A. I am not living there. I am just staying there for a while.

Q. You are staying with your mother?

A. Yes.

Mr. Clark: That is all.

Mr. Brown: One more question.

Recross-Examination.

By Mr. Brown:

Q. Your father has supported you continuously right up to the time you became employed by the—

Mr. Clark: Wait a minute. That is a leading a suggestive question.

(Testimony of Lila Lorine Cook)

The Referee: Well, over here, sir, we do not have any juries. If it is leading, if it leads to the truth, fine. [63] I feel I am qualified to disassociate the wheat from the chaff.

In other words, are you self supporting?

The Witness: Not right now.

The Referee: Not right now?

The Witness: Not right now.

The Referee: When you lived at your father's home up until a few weeks ago did you provide for yourself?

The Witness: Well, for three months I did. I was working then. But the rest of the time he was supporting me.

The Referee: When you were not working who supported you? Who took care of you and gave you food and clothing and shelter?

The Witness: My father.

The Referee: Your father?

The Witness: Yes.

The Referee: Any further questions?

Mr. Brown: That is all.

Mr. Clark: That is all.

The Referee: That is all I wanted to determine. Now, if you have any additional authorities, give them to me.

(Citation of authorities on the part of counsel omitted.)

State of California, County of Los Angeles—ss.

I, Byron Oyler, Official Court Reporter, hereby certify that the foregoing sixty-four pages comprise a true and correct transcript of my shorthand notes of the testimony given in the above entitled matter.

Dated this 25th day of January, 1946.

BYRON OYLER,

Official Court Reporter.

[Endorsed]: Filed May 9, 1946 [65]

[Endorsed]: No. 11350. United States Circuit Court of Appeals for the Ninth Circuit. Master Lubricants Company, a corporation, Appellant, vs. George O. Cook, Minnie M. Cook, Ignatius F. Parker, Trustee in Bankruptcy of the estates of George O. Cook and Minnie M. Cook, Bankrupts, Appellees. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed June 11, 1946.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

United States Circuit Court of Appeals
For the Ninth Circuit.

No. 11350

MASTER LUBRICANTS COMPANY, a corporation,
Appellant,

vs.

GEORGE O. COOK and MINNIE M. COOK,
Appellees.

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY ON THE APPEAL, AND DESIGNATION OF THE PORTIONS OF THE RECORD FOR CONSIDERATION THEREOF.

A. For a statement of points to be relied upon under Rule 19(6), on this appeal, appellant hereby refers to and adopts appellant's statement of Points under Rule 75(d), Rules of Civil Procedure, heretofore filed in the United States District Court, and set out in the Clerk's transcript of Record, at pages 80-84 inclusive.

B. Appellant further designates as portions of the Record to be printed, that part of the Record on appeal, as certified by the Clerk of the District Court, and filed herein, including the Reporter's transcript, as necessary for the consideration of Appellant's points on appeal, the following parts and portions thereof:

1 Petition in bankruptcy of George O. Cook, including Schedules A and B, and Order of adjudication and reference, set out at pages 1-17 inclusive.

2 Omit petition, schedules A and B, and order of adjudication of Minnie M. Cook, set out on pages 18-33

inclusive, as they are, with the exception of name of bankrupt and the inclusion of an automobile valued at \$70.00, in her Schedule B and the omission in Schedule A of a note owing to Mrs. Miller of \$500.00, identical with petition, Schedules A. and B. and order of adjudication in the matter of George O. Cook.

3 Include Trustee's Report of Exempt property in the matter of George O. Cook set out at page 34 of Record, and same in matter of Minnie M. Cook, at page 35.

4 Include Objections and Exceptions of Creditor, Master Lubricants Company, a corporation to Trustee's Report of Exemptions in the matter of George O. Cook, set out at pages 36-39 inclusive.

5 Omit same matter in matter of Minnie M. Cook, set out at pages 40-43 inclusive, as they are identical with that in matter of George O. Cook, with exception of names of bankrupts.

6 Include Referee's Findings of Fact and Conclusions of law, set out on pages 44-47 inclusive.

7 Include Referee's Order, over-ruling objections and exceptions of creditor to Trustee's Report of Exempt property, set out at pages 48-49 inclusive.

8 Include Petition for review of order of Referee by Judge, set out on pages 50-56 inclusive.

9 Include objecting Creditor, Master Lubricants Company's Exhibit No. 1 at trial before Referee, set out at pages 57-70 inclusive.

10 Include Referee's Certificate on Review, set out at pages 71-74 inclusive.

11 Include Order of United States District Court, denying petition for review and affirming Referee's order, set out at pages 75-76 inclusive.

12 Include Notice of Appeal set out on page 77.

13 Include cost bond set out on pages 78-79 inclusive.

14 Include Designation of Points by Appellant on which it would rely on appeal, set out at pages 80-84 inclusive.

15 Include Designation by Appellant of papers and matters to be included in Clerk's Record on Appeal, set out at pages 85-87 inclusive.

16 Include Clerk's certificate of Record set out pages 88-89 inclusive.

17 Include the following parts and portion of Reporter's Transcript of evidence before Referee at hearing on September 28th and October 5th, 1944, set out at pages 1-20 of said Transcript, covering stipulations and testimony of Minnie M. Cook. Also testimony of Lila Lorene Cook set out on pages 52-55 inclusive, of said Reporter's transcript; also testimony of same witness, on hearing October 5, 1944, set out on pages 56-64 of said transcript, and the Reporter's certificate at page 65 thereof.

18 This designation of points on appeal and parts of Record to be printed.

Dated June 10, 1946.

JAMES P. CLARK,
Attorney for Appellant.

[Endorsed]: Filed Jun. 11, 1946. Paul P. O'Brien,
Clerk.